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Tuesday
September 5, 1995

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WHEN: September 12 at 9:00 am

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

RESERVATIONS: 202–523–4538

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Atlanta, GA

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Contents

Federal Register

Vol. 60, No. 171

Tuesday, September 5, 1995

Agricultural Marketing Service
RULES
Potatoes (Irish) grown in—
Idaho and Oregon, 46017–46018

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Cooperative State Research, Education, and Extension Service
See Grain Inspection, Packers and Stockyards Administration

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Nonregulated status determinations—
Monsanto Co.; genetically engineered corn, 46107–46108

Arms Control and Disarmament Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Hubert H. Humphrey fellowship competition, 46109
William C. Foster fellows visiting scholars program, 46109–46110

Army Department
NOTICES
Meetings:
Science Board, 46114

Assassination Records Review Board
NOTICES
Meetings; Sunshine Act, 46147

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Center for Environmental Health, 46128

Children and Families Administration
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 46128

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Georgia, 46110
Indiana, 46110
Minnesota, 46110

Coast Guard
PROPOSED RULES
Dangerous cargoes:
Self-propelled vessels carrying bulk liquefied gases; safety standards; withdrawn, 46087
Drawbridge operations:
Louisiana, 46069–46070

Commerce Department
See Economic Development Administration
See Economics and Statistics Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 46111

Comptroller of the Currency
RULES
Risk-based capital:
Derivative transactions, 46170–46185

Cooperative State Research, Education, and Extension Service
NOTICES
Meetings:
National Sustainable Agriculture Advisory Council, 46108

Customs Service
RULES
Uruguay Round Agreements Act (URAA):
Textiles and textile products; country of origin determination, 46188–46204
NOTICES
Automated export system; satellite broadcast, 46140–46141
Country of origin marking:
CardDock units; U.S. Air Force, 46141
Imported merchandise price adjustment by related party companies; reconciliation use test, 46141–46145

Defense Department
See Army Department
See Defense Logistics Agency
See National Communications System
RULES
Personnel:
Military whistleblower protection; CFR part removed, 46019–46020
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 46162–46167

Defense Logistics Agency
NOTICES
NASA/DOD initiative; contractor facilities; common processes use, 46114

Economic Development Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 46111

Economics and Statistics Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 46113

Education Department
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 46114–46115

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Radionuclide emissions from licensed facilities, 46206–46212
Air quality implementation plans; approval and promulgation; various States:
Alaska, 46021–46024
Arizona, 46024–46025
North Carolina, 46020–46021
Oregon, 46025–46029
West Virginia, 46029–46030
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Alaska, 46070–46071
North Carolina, 46070
Oregon, 46071
West Virginia, 46071
Clean Air Act:
State operating permits programs—
Kentucky, 46072–46076
Superfund program:
Toxic chemical release reporting; community right-to-know—
Diethyl phthalate, 46076–46079
NOTICES
Hazardous waste:
Land disposal restrictions; exemptions—
BASF Corp., 46118
Monsanto Chemical Co., 46118
Meetings:
Common Sense Initiative—
Computers and electronics sector, 46118–46119
Superfund; response and remedial actions, proposed settlements, etc.:
Muratti Environmental Site, PR, 46119

Executive Office of the President
See Management and Budget Office

Federal Communications Commission
RULES
Radio stations; table of assignments:
Washington, 46063
Television stations; table of assignments:
California, 46063–46064
NOTICES
Agency information collection activities under OMB review, 46119–46120

Federal Deposit Insurance Corporation
RULES
Capital maintenance:
Risk-based capital standards; derivative transactions, 46170–46185

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arizona et al., 46038–46040
Connecticut et al., 46040–46042
Delaware et al., 46044–46047
Indiana et al., 46043–46044
Montana, 46042–46043
Flood insurance; communities eligible for sale:
Connecticut et al., 46030–46037
Texas, 46037–46038
PROPOSED RULES
Flood elevation determinations:
Illinois et al., 46079–46085
Kansas et al., 46085–46087

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Northern States Power Co.-Wisconsin, 46117–46118
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 46115
Barranquilla Lease Holding, Inc., 46115–46116
EI Power, Inc., 46116
International Power Advisors, Inc., 46116
Kva Resources, Inc., 46116
Pacific Gas Transmission Co., 46116–46117
Shell Offshore Inc., 46117

Federal Housing Finance Board
NOTICES
Privacy Act:
Systems of records, 46120–46125

Federal Maritime Commission
RULES
Maritime carriers in domestic offshore commerce:
Rate of return methodology and financial reporting requirements, 46047–46063

Federal Reserve System
RULES
Membership of State banking institutions (Regulation H); and bank holding companies and change in bank control (Regulation Y):
Risk-based capital standards—
Derivative transactions, 46170–46185
NOTICES
Applications, hearings, determinations, etc.:
Crestar Financial Corp. et al., 46125
First Bank System, Inc., 46125–46126
Lenox Bancorp, Inc., et al., 46126
NBD Bancorp, Inc., 46126–46127

Fish and Wildlife Service
PROPOSED RULES
Importation, exportation, and transportation of wildlife:
General provisions and general permit procedures, 46087–46105

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 46127–46128

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 46162–46167

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Louisiana et al., 46108
North Dakota, 46108–46109

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration

Housing and Urban Development Department
RULES
Acquisition regulations:
Miscellaneous amendments, 46152–46160
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 46129–46130
Organization, functions, and authority delegations:
Deputy Assistant Secretary for Resource Management and Operations; competition advocate designation, 46160

Interior Department
See Fish and Wildlife Service
See National Park Service
See Reclamation Bureau

Interstate Commerce Commission
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 46133–46134
Rail carriers:
State intrastate rail rate authority—Oklahoma, 46134
Railroad operation, acquisition, construction, etc.:
Union Pacific Railroad Co. et al., 46134

Justice Department
RULES
Organization, functions, and authority delegations:
Drug Enforcement Administration, Administrator, et al., 46018–46019

Management and Budget Office
RULES
Reporting and recordkeeping requirements
Correction, 46148–46149

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 46162–46167

National Communications System
NOTICES
Meetings:
National Security Telecommunications Advisory Committee, 46134–46135

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—Optical parts such as lenses and reflectors; plastic material use, 46064–46067

National Institute of Standards and Technology
NOTICES
Meetings:
Advanced Technology Visiting Committee, 46111

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 46067–46068
PROPOSED RULES
Fishery conservation and management:
Summer flounder, 46105–46106
NOTICES
Grants and cooperative agreements; availability, etc.:
Northeast multispecies fishing capacity reduction demonstration program, 46111–46112
Meetings:
North Pacific Fishery Management Council, 46112–46113
Pacific Fishery Management Council, 46112
Permits:
Endangered and threatened species, 46113

National Park Service
NOTICES
Environmental statements; availability, etc.:
Grand Canyon National Park, AZ, 46130–46132
Northern and Eastern Mojave Desert, CA, 46132–46133

National Science Foundation
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 46135

National Telecommunications and Information Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 46113

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Georgia Power Co. et al., 46135–46137

Office of Management and Budget
See Management and Budget Office

Personnel Management Office
NOTICES
Meetings:
Federal Salary Council, 46137

Public Health Service
See Centers for Disease Control and Prevention

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Savage Rapids Dam, OR, 46133

Resolution Trust Corporation
NOTICES
Coastal Barrier Improvement Act; property availability:
Clinton Woods, NJ, et al., 46137–46138

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Options Clearing Corp., 46138–46139

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 46139–46140

Transportation Department
See Coast Guard
See National Highway Traffic Safety Administration
RULES
Aviation economic rules; Federal regulatory review
Correction, 46018

Treasury Department
See Comptroller of the Currency
See Customs Service

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Impression of France: Monet, Renoir, Pisarro, and their Rivals, 46146
Pandora's Box: Women in Classical Greece, 46145–46146

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 46152–46160

Part III
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 46162–46167

Part IV
Federal Reserve System, 46170–46185

Part V
Department of the Treasury, Customs Service, 46188–46204

Part VI
Environmental Protection Agency, 46206–46212

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
1320.....46148

7 CFR
945.....46017

12 CFR
3.....46170
208.....46170
225.....46170
325.....46170

14 CFR
399.....46018

19 CFR
10.....46188
12.....46188
102.....46188
178.....46188

28 CFR
0.....46018

32 CFR
92.....46019

33 CFR
Proposed Rules:
117.....46069

40 CFR
52 (5 documents) 46020, 46021, 46024, 46025, 46029
61.....46206
Proposed Rules:
52 (4 documents) 46070, 46071
70.....46072
372.....46076

44 CFR
64 (2 documents) 46030, 46037
65 (4 documents) 46038, 46040, 46042, 46043
67.....46044
Proposed Rules:
67 (2 documents) 46079, 46085

46 CFR
552.....46047
Proposed Rules:
40.....46087
154.....46087

47 CFR
73 (2 documents) 46063

48 CFR
2401.....46152
2402.....46152
2404.....46152
2405.....46152
2405.....46152
2406.....46152
2413.....46152
2415.....46152
2416.....46152
2419.....46152
2426.....46152
2428.....46152
2429.....46152
2432.....46152
2436.....46152
2437.....46152
2452.....46152
2453.....46152

49 CFR
571.....46064

50 CFR
672 (2 documents) 46067
Proposed Rules:
10.....46087
13.....46087
17.....46087
625.....46105

Rules and Regulations

Federal Register
Vol. 60, No. 171
Tuesday, September 5, 1995

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV95–945–1FIR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses under Marketing Order No. 945 for the 1995–96 fiscal period. That rule also increased the level of authorized expenses for the 1993–94 fiscal period. Authorization of this budget enables the Idaho-Eastern Oregon Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Authorization of the increase in the level of authorized expenses for the 1993–94 fiscal period is necessary because the Committee exceeded its budget for that period. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: Section 945.248 is effective August 1, 1995, through July 31, 1996. The amendment to § 945.246 was effective August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97205, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in designated counties in Idaho, and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

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

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

There are approximately 2,100 producers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 60 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Idaho-Eastern Oregon potato producers and handlers may be classified as small entities.

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

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Idaho-Eastern Oregon potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 6, 1995, and unanimously recommended a 1995–96 budget of $111,732, $11,853 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95

(in parentheses) are: Salaries, $63,232 ($55,479), meetings and miscellaneous, $2,500 ($2,000), Federal payroll taxes, $5,300 ($4,700), and reserve/auto purchase, $9,000 ($6,000). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.0026 per hundredweight, the same as each year for the past decade. This rate, when applied to anticipated shipments of 34,000,000 hundredweight, will yield $88,400 in assessment income. This, along with $23,332 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1995–96 fiscal period, estimated at about $80,000, will be within the maximum permitted by the order of one fiscal period's expenses.

The 1993–94 budget was published in the **Federal Register** as an interim final rule on July 16, 1993 (58 FR 38274) and finalized on October 28, 1993 (58 FR 57957). That rule authorized Committee expenses of $98,942. The Committee exceeded its authorized expenses by $713, for total expenses of $99,655. Funds to cover this increase were taken from the Committee's authorized reserve. The 1993–94 budget is amended to cover this increase.

An interim final rule was published in the **Federal Register** on July 17, 1995 (60 FR 36339). That interim final rule added § 945.248 to authorize expenses and establish an assessment rate for the Committee. That rule also amended § 945.246 to increase the level of authorized expenses for the 1993–94 fiscal period. That rule provided that interested persons could file comments through August 16, 1995. No comments were received.

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

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

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

List of Subjects in 7 CFR Part 956

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

Accordingly the interim final rule amending § 945.246 and adding § 945.248, which was published at 60 FR 36339 on July 17, 1995, is adopted as a final rule without change.

Dated: August 29, 1995.

Ron Cioffi,

Acting Deputy, Director, Fruit and Vegetable Division.

[FR Doc. 95–21936 Filed 9–1–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. OST–95–397]

RIN 2105–AC–27

Aviation Economic Rules; Correction

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule (Docket OST–95–397) published Tuesday, August 22, 1995 (60 FR 43521). The regulation at issue—14 CFR 399.21—sets forth the policy of the Department concerning requests for exemptions from 49 U.S.C. 41102 by air carriers seeking to perform charter air transportation.

EFFECTIVE DATE: September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Background

By final rule (Docket OST–95–397) published on August 22, 1995 (60 FR 43521), the Department amended various provisions regarding aviation economic rules in order to eliminate obsolete provisions and correct outdated organizational and statutory references.

Need for Correction

As published, the final rule contains an error which may prove to be misleading and is in need of correction. Specifically, the rule (at page 43531, second column, paragraph 172) states erroneously that § 399.21 is being removed; rather, that section is being amended in the manner stated in the following paragraph on that page (paragraph 173).

Correction of Publication

Accordingly, the publication on August 22, 1995, of the final rule (Docket OST–95–397) that was the subject of 60 FR 43521, is corrected as follows:

§ 399.21 [Corrected]

1. On page 43531, second column, paragraph 172, remove the reference ''399.21''.

Dated: August 29, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–21956 Filed 9–1–95; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF JUSTICE

28 CFR Part 0

[DEA–136F]

Redelegation of Functions; Delegation of Authority to Drug Enforcement Administration Official

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Under delegated authority, the Administrator of the Drug Enforcement Administration (DEA), Department of Justice, is amending the appendix to the Justice Department regulations to redelegate certain functions and authority which were vested in the Attorney General by the Controlled Substances Act and subsequently redelegated to the

Administrator and to make a technical correction to reflect a change in position title.

EFFECTIVE DATE: August 21, 1995.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) establishes a comprehensive system of controls over the manufacture, distribution, dispensing, importation and exportation of controlled substances and listed chemicals. The CSA requires that persons who manufacture, distribute, dispense, import or export controlled substances or certain listed chemicals obtain a registration from DEA and make certain records and reports concerning their activities with controlled substances and listed chemicals. On June 22, 1995, DEA published a Final Rule to implement the Domestic Chemical Diversion Control Act of 1993 in the **Federal Register**. In part, the final rule amended Chapter II of Title 21, Code of Federal Regulations, to add a new Part 1309, relating to the registration of manufacturers, distributors, importers and exporters of List I chemicals. The amendment becomes effective on August 21, 1995.

The Attorney General has delegated her functions under the CSA to the Administrator of the Drug Enforcement Administration and authorized the Administrator to redelegate any of his functions to any of his subordinates. See 21 U.S.C. 871(a), 28 CFR 0.100(b) and 28 CFR 0.104. To further enhance the administration of the CSA and its attendant regulations, the Administrator is redelegating to the Deputy Assistant Administrator of the DEA Office of Diversion Control the authority to exercise all necessary functions with respect to the promulgation and implementation of the regulations in Part 1309 of Chapter II, title 21, Code of Federal Regulations incident to the registration of manufacturers, distributors, importers and exporters of List I chemicals, except that final orders in connection with suspension, denial or revocation of registration shall be made by the Deputy Administrator of DEA.

In a separate matter, Section 9 of the Appendix to Subpart R is being amended to redelegate the authority to furnish, or cause to be furnished, descriptions of persons with whom regulated transactions may not be completed without prior approval of the DEA; to approve such transactions pursuant to 21 U.S.C. 830(b) and 21 CFR 1310.05(b); and to approve or disapprove regular customer or regular importer status under 21 U.S.C. 971 and 21 CFR 1313.15 and 1313.24 to the Chief of Operations of the DEA, Operations Division. This redelegation reflects a recent organizational change within DEA. Prior to the reorganization, the Deputy Assistant Administrator, Office of Diversion Control reported to the Deputy Assistant Administrator of Operations, Operations Division; the Deputy Assistant Administrator, Office of Diversion now reports to the Chief of Operations of the DEA, Operations Division. The redelegation also reflects the removal of regular supplier status and addition of regular importer status to the regulations by the Domestic Chemical Diversion Control Act of 1993.

The Administrator certifies that this action will have no impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601). Pursuant to Executive Order 12866, this is not a significant regulatory action since it relates only to the organization of functions within DEA. Accordingly, it has not been reviewed by the Office of Management and Budget and does not require certification under Executive Order 12778. This action has been analyzed in accordance with Executive Order 12616. It has been determined that this matter has no federalism implications which would require preparation of a federalism assessment.

List of Subjects in 28 CFR Part 0

Authority Delegations (Government Agencies), Organizations and functions (Government Agencies).

For the reasons set forth above, and pursuant to the authority vested in the Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104, and 21 U.S.C. 871, title 28 of the Code of Federal Regulations, part 0, appendix to subpart R, Redelegation of Functions, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301: 28 U.S.C. 509, 510, 515–519.

2. The Appendix to subpart R is amended by redesignating paragraphs 7(h) through 7(k) as 7(i) through 7(l), inserting a new paragraph 7(h), and revising Section 9 to read as follows:

Appendix to Subpart R—Redelegation of Functions

* * * * *

Sec. 7. * * *

(h) Part 1309, incident to the registration of manufacturers, distributors, importers and exporters of List I chemicals, except that final orders in connection with suspension, denial or revocation of registration shall be made by the Deputy Administrator of DEA.

* * * * *

Sec. 9. *Chemical Diversion Act Functions.* The Chief of Operations of the DEA, Operations Division, is authorized to furnish, or cause to be furnished, descriptions of persons with whom regulated transactions may not be completed without prior approval of the DEA; to approve such transactions pursuant to 21 U.S.C. 830(b) and 21 CFR 1310.05(b); and to approve or disapprove regular customer or regular importer status under 21 U.S.C. 971 and 21 CFR 1313.15 and 1313.24.

* * * * *

Dated: August 24, 1995.

Thomas A. Constantine,

Administrator.

[FR Doc. 95–21932 Filed 9–1–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 92

Military Whistle Protection; Removal of Part

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes the Department of Defense's rule concerning the Military Whistleblower Protection. The part has served the purpose for which it was intended for the Code of Federal Regulations, and is no longer necessary.

EFFECTIVE DATE: September 5, 1995.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION: At the present time, there are two(2) documents codified as 32 CFR part 92. The Military Whistleblower Protection document should be removed. DoD Directive 7050.6, same title, is presently available from the National Technical Information Service. The most current version, August 12, 1995, will be available from NTIS at a later date. Requests for the Directive should be forwarded to: National Technical

Information Service, 5285 Port Royal Road, Springfield, VA 22161. On August 19, 1994, 59 FR 42752, the Department of Defense published 32 CFR part 92. However, on August 8, 1995, 60 FR 40277, DoD duplicated the use of part 92 before they removed the original part 92. Part 92 published at 60 FR 40277 remains unchanged and should not be connected in any manner with the document to be removed.

List of Subjects in 32 CFR Part 92

Administrative practice and procedure; Investigations; Military personnel; Whistleblowing

PART 92—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 92 published at 59 FR 42752, is removed.

Dated: August 29, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–21840 Filed 9–1–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–071–1–6960a; FRL–5269–5]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 14, 1994, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, submitted a revision to the North Carolina State Implementation Plan (SIP). This revision is the adoption of an amendment to rule 15A NCAC 2D .0518 Miscellaneous Volatile Organic Compounds Emissions. This amendment was included to define that diacetone alcohol is considered to be a nonphotochemically reactive solvent. This rule is applicable to all sources of VOC emissions for which no other VOC emission standards are applicable.

DATES: This final rule is effective November 6, 1995 unless notice is received by October 5, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by the NCDEHNR may be examined during normal business hours at the following locations:

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.

North Carolina Department of Environment, Health and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4212.

SUPPLEMENTARY INFORMATION: On October 14, 1994, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, submitted a revision covering the adoption of an amendment to rule 15A NCAC 2D .0518 Miscellaneous Volatile Organic Compound Emissions. This amendment was included to define that diacetone alcohol is considered to be a nonphotochemically reactive solvent. This rule is applicable to all sources of VOC emissions for which no other VOC emission standards are applicable. This revision was the subject of public hearings held on March 28 and 30, 1994. EPA is approving the amendment of rule 15A NCAC 2D .0518 because this revision is consistent with the requirements of the Clean Air Act and EPA guidance.

Final Action

EPA is approving the above referenced revision to the North Carolina SIP. This action is being taken without prior proposal because the EPA 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 November 6, 1995 unless, by October 5, 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 November 6, 1995.

Under Section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2)).

The OMB has exempted these actions from review under Executive Order 12866.

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

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 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, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2) and 7410 (k)(3).

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 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector. EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this or 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 in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: July 25, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

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

Authority: 42.U.S.C. 7401–7671q.

Subpart II

2. Section 52.1770, is amended by adding paragraph (c)(81) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(81) The VOC revision to the North Carolina State Implementation Plan which were submitted on October 14, 1994.

(i) Incorporation by reference. Addition of new North Carolina regulations 15A NCAC 2D .0518 which was state effective on September 1, 1994.

(ii) Other material. None.

* * * * *

[FR Doc. 95–20596 Filed 9–1–95; 8:45 am]

BILLING CODE 6050–50–P

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40 CFR Part 52

[AK–8–1–6733a; FRL–5286–8]

Approval and Promulgation of Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the State of Alaska Implementation Plan (SIP) revision submitted by the State of Alaska for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The implementation plan was submitted by the State to satisfy the Federal mandate of the Clean Air Act (CAA or Act), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated below.

DATES: This final rule is effective on November 6, 1995 unless notice is received by October 5, 1995, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, WA 98101, and Alaska Department of Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: David J. Dellarco, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in Section 507 of Title V of the CAA. In January 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Alaska has submitted a SIP revision to EPA in order to satisfy the requirements of Section 507. In order to gain full approval, the State

submittal must provide for each of the following PROGRAM elements: (1) the establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State of Alaska has met this requirement by developing its SBAP with both proactive and reactive components. The proactive element will use outreach techniques to develop and distribute compliance and technical information to small businesses, including details on their rights and obligations, alternative control technologies, and compliance methods. These techniques will include direct mail, public service announcements, and meetings with small businesses. The reactive element will use a telephone hot line to receive questions from small businesses. In addition, the SBAP will maintain a clearinghouse of information, in the form of a library of documents and computer files, relevant to the compliance alternatives available to small businesses.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by planning to provide small businesses with information and assistance on accidental release prevention and detection. This information may include requirements under the accidental release provisions of the CAA, requirements of the Superfund Amendments and Reauthorization Act title III, Occupational Safety and Health administration process safety standards, as well as general information on prevention practices and technologies. The State of Alaska's non-regulatory pollution prevention program will provide the SBAP with direct pollution prevention support and expertise. The pollution prevention office will utilize both State and regional pollution prevention resources to provide direct pollution prevention technical assistance to small businesses.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by planning to develop its SBAP with a main emphasis on assisting small businesses in obtaining any necessary air quality operating permits. The SBAP plans to use workshops to guide small businesses through the air quality operating permit application process. In addition, the SBAP will develop source specific outreach materials on the responsibilities of small businesses established through existing and future CAA requirements.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulations or standards issued under the Act. The State has met this requirement by planning to use direct mailing, public service announcements, and meetings with small businesses to notify them of their rights and obligations under air quality requirements in a timely manner.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement by planning to establish a voluntary on-site evaluation program to help small businesses determine if their operations comply with the Act.

The sixth requirement is to develop procedures for consideration of requests from small business stationary sources for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by planning to develop procedures, by regulation, to respond to requests from small businesses for work practice modifications. The State of Alaska will develop these procedures concurrently with its revisions to Alaska's air quality regulations, and follow the requirements of Alaska's Administrative Procedure Act. The regulations that address requirements for work practice modification requests will be submitted by Alaska with its Title V Operating Permits Program, and become effective upon EPA approval of Alaska's Title V Operating Permits Program.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by establishing the position of Small Business Advocate, which will promote the rights and concerns of small businesses. The Small Business Advocate is separate from the SBAP and independent from Alaska's Air Quality Management Program.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by appointing its CAP in accordance with the above requirements.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) to render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2]; (3) to

[1] A seventh requirement of Section 507(a), establishment of an Ombudsman office, is discussed in the next section.

[2] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three

review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by directing its CAP to meet the above areas of responsibility.

4. Eligibility

Section 507(c)(1) of the CAA defines the term ''small business stationary source'' as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

In addition, under Section 507(c)(2) of the CAA a State may, upon petition by a source and after notice and opportunity for comment, include as a ''small business stationary source'' any source that does not meet the provisions of Sections 507(c)(1) (C), (D), and (E) of the CAA but does not emit more than 100 tpy of all regulated pollutants.

Under Alaska's PROGRAM, a facility is a ''small business facility'' and thus eligible for assistance under the PROGRAM if the facility:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in 15 U.S.C. 631 (Small Business Act); and

(C) Emits less than 100 tpy of regulated air contaminants. Alaska Statutes 46.14.990(22). Alaska has therefore expanded PROGRAM eligibility by statute to include all sources that could apply for eligibility on a case-by-case basis under Section 507(c)(2) of the CAA after notice and opportunity for comment. Based on assurances from the State, EPA believes that Alaska's definition of eligible sources will not interfere with the State's obligation to provide assistance to ''small business stationary sources'' as defined under Section 507(c)(1) of the CAA and that it is therefore consistent with Section 507(c) of the Clean Air Act.

In addition, the State of Alaska has provided, as required by Section 507(3) of the CAA, for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA. The State of Alaska has also established a mechanism based on direct assistance from the Small Business Advocate for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility under Section 507(c) of the CAA.

III. This Action

In this action, EPA approves the SIP revision submitted by the State of Alaska.

The State of Alaska has submitted a SIP revision implementing each of the PROGRAM elements required by Section 507 of the CAA. At this time, the SBAP, Small Business Advocate, and CAP are in place.

IV. Administrative Review

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.

By this action, the EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved in this action does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small business entities affected.

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, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 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 estimated costs to State, local, or tribal governments in the aggregate; or to 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 approval action promulgated 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 Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory

Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

action from Executive Order 12866 review.

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 November 6, 1995 unless, by October 5, 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 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 November 6, 1995.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small Business Assistance Program.

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: August 15, 1995.

Jane S. Moore,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c) (20) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(20) On April 18, 1994, the Commissioner of the Alaska Department of Environmental Conservation (ADEC) submitted ''The Alaska Air Quality Small Business Assistance Program State Air Quality Control Plan Amendment,'' adopted April 8, 1994, as a revision to the Alaska SIP.

(i) Incorporation by reference.

(A) Letter dated April 8, 1994, from the Commissioner of ADEC to the Regional Administrator of EPA, submitting ''The Alaska Air Quality Small Business Assistance Program State Air Quality Control Plan Amendment'' to EPA; the Alaska Air Quality Small Business Assistance Program State Air Quality Control Plan Amendment (which includes Appendix A the Alaska Statutes Title 46, Chapter 14, Article 3), dated April 1994, and adopted April 8, 1994.

(ii) Additional information.

(A) Letter dated July 24, 1995, from Alaska Department of Environmental Conservation, submitting information necessary for approval of the SBAP revision to EPA; the July 1995 SBAP Update, Responses to EPA Comments, and the Air Quality/Small Business Assistance Compliance Advisory Panel Board Information.

* * * * *

[FR Doc. 95–21875 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[AZ 17–1–6710; FRL–5279–8]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department—Air Pollution Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on March 10, 1994. The revisions concern rules from the Maricopa County Environmental Services Department—Air Pollution Control (Maricopa County). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). This final action serves as a final determination that the findings of non-submittal that were issued for these rules have been corrected and that any sanctions or Federal Implementation Plan (FIP) obligations triggered by such non-submittal are permanently stopped. These rules control VOC emissions from graphic arts printing and coating operations and from the storage, loading, and transport of organic liquids. Thus, EPA is finalizing the approval of these rules into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATES: This action is effective on October 5, 1995.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street SW., Washington, D.C. 20460.

Maricopa County Environmental Services Department, 2406 South 24th Street, Suite E–214, Phoenix, AZ 85034–6822.

Arizona Department of Environmental Quality, Air Quality Planning Office, 3003 N. Central Avenue, Fifth Floor, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Erik H. Beck, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1190. Internet E-mail: beck.erik@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1994, EPA proposed approval of the following rules into the Arizona SIP: 337 (''Graphic Arts''), 350 (''Storage of Organic Liquids at Bulk Plants and Terminals''), 351 (''Loading of Organic Liquids''), and 352 (''Gasoline Delivery Vessels''), as

adopted by Maricopa County on April 6, 1992 (Rules 337, 350, and 351) and November 16, 1992 (Rule 352). These rules were submitted by the Arizona Department of Environmental Quality to EPA on June 29, 1992 (Rules 337, 350, and 351) and February 4, 1993 (Rule 352). These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the Notice of Proposed Rulemaking (NPRM) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and with EPA's regulations and interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable requirements. A detailed discussion of the rule provisions and evaluations has been provided in 59 FR 11228 and in technical support documents (TSDs) available at EPA's Region IX office. These TSDs are dated: June 23, 1993 (Rule 337) and July 30, 1993 (Rules 350, 351, and 352).

Response to Public Comments

A 30-day public comment period was provided in 59 FR 11228. EPA did not receive comments on any of the rules.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the Arizona SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

On June 12, 1991 EPA notified Maricopa County that required elements of the SIP had not been submitted to EPA, thus beginning a FIP clock (under section 110(c) of the CAA) and a sanction clock (under section 179(a) of the CAA). These missing elements included the following source categories: Fixed Roof Storage (Rule 350), Gasoline Bulk Plants and Loading Terminals (Rule 351), Stage I: Service Stations Gasoline Transfer (Rule 353), and Graphic Arts (337). The section 179(a) sanction clock associated with these elements was terminated upon submittal of the rules to EPA. This Final Rule permanently terminates the section 110(c) FIP clock that commenced upon Maricopa County's failure to submit rules 337, 350, and 351.

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

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 Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result 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.

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 8, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c) (70) and (78) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(70) New and amended regulations for the Maricopa County Environmental Services Department—Air Pollution Control were submitted on June 29, 1992, by the Governor's designee.

(i) Incorporation by reference.

(A) New Rules 337, 350, and 351, adopted on April 6, 1992.

* * * * *

(78) New and amended regulations for the Maricopa County Environmental Services Department—Air Pollution Control were submitted on February 4, 1993, by the Governor's designee.

(i) Incorporation by reference.

(A) New Rule 352, adopted on November 16, 1992.

* * * * *

[FR Doc. 95–21883 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OR–31–1–5932a; FRL–5283–4]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the State of Oregon Implementation Plan (SIP) revision submitted by the State of Oregon for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The implementation plan was submitted by the State to satisfy the Federal mandate, found in Section 507 of the Clean Air Act (CAA or the Act), to ensure that small businesses have access to the

technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this notice; additional information is available at the address indicated below.

DATES: This final rule is effective November 6, 1995 unless notice is received by unless adverse or critical comments are received by October 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT–082), EPA, OR–31–1–5932, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: David J. Dellarco, Air and Radiation Branch (AT–082), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA or Act), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in Section 507 of Title V of the CAA. In January 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments,* in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Oregon has submitted a SIP revision to EPA in order to satisfy the requirements of Section 507. Section 468.330 of the Oregon Revised Statutes establishes a Small Business Stationary Source Technical and Environmental Compliance Assistance Program and requires the Program to include each element specified in section 507(a) of the Act. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) the establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement through participation in a Pacific Northwest regional effort designed to ensure collection and development of compliance methods and technologies for small businesses. In addition, Oregon's SBAP has an information component and a technical assistance component. The information component advises small business about air quality regulations that may affect them, through education, outreach, and toll-free telephone access. The technical assistance component helps small businesses through direct consultation and site visits.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by coordinating and integrating SBAP activities with its pollution prevention activities, in particular the toxics use and waste reduction program. In addition, Oregon's SBAP will coordinate with the State Fire Marshal, Oregon-OSHA, and local emergency response programs in order to ensure small businesses receive assistance and information on accidental release detection and prevention.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by training staff in regulatory and permitting requirements, informing small businesses of their responsibilities through outreach, and providing compliance assistance through the SBAP.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by ensuring that small business rights are included in education and outreach materials and activities, as well as during the delivery of technical assistance. Oregon follows a policy of providing the regulated community with at least 30 calendar days advance notice before applicable requirements take effect.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement through a policy of providing the regulated community with at least 30 calendar days advanced notice of their obligations under state law, developing a program for qualified outside auditors

[1] A seventh requirement of Section 507(a), establishment of an Ombudsman office, is discussed in the next section.

to provide compliance assessments upon request, and providing compliance assistance through the Compliance Assessment Program.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by developing standardized criteria and administrative procedures for considering such requests.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by establishing and filling a new technical assistance coordinator position located in the administration section of the Department's Regional Operations Division. The technical assistance coordinator is assigned the responsibilities of the Small Business Ombudsman.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by establishing a Compliance Advisory Panel comprised of these individuals. *See* ORS 468A.330(3).

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) to render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;[2] (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by authorizing its CAP to address these responsibilities. *See* ORS 468A.330(2).

4. Eligibility

Section 507(c)(1) of the CAA defines the term ''small business stationary source'' as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Oregon has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in Section 507(c)(1) of the CAA.

The State of Oregon has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of Sections 507(c)(1) (C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The State of Oregon has provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

5. Onsite Technical Assistance

The statute establishing the Oregon Small Business Program, ORS 468A.330, provides that onsite technical assistance for the development and implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall not result in inspections or enforcement actions except where there is reasonable cause to believe that a clear and immediate danger to the public health and safety or to the environment exists. *See* ORS 468A.330(4)(a). On August 12, 1994, EPA issued a guidance memorandum entitled ''Enforcement Response Policy for Treatment of Information Obtained Through Clean Air Act Section 507 Small Business Assistance Programs'' signed by Steven A. Herman (herein referred to as the ''SBA Enforcement Guidance''), which sets forth EPA's enforcement response policy on the treatment of violations detected during compliance assistance visits under State Small Business Assistance Programs. The SBA Enforcement Guidance endorses State PROGRAMS that either (1) voluntarily seek compliance assistance a limited period to correct violations observed or revealed as a result of compliance assistance or (2) if the PROGRAM is independent of the delegated State air enforcement program, keep confidential information that identifies the names and locations of specific small businesses with violations revealed through compliance assistance.

The Oregon statute does not satisfy the requirements of the first option of the SBA Enforcement Guidance in that ORS 468A.330(4)(a) does not simply give sources that receive onsite technical assistance a limited opportunity to correct a violation, but instead prohibits further enforcement inspections and enforcement actions that result from onsite technical assistance. On May 16, 1995, the State or Oregon submitted to EPA a guidance document entitled ''Air Quality Guidance: Restriction of Information Obtained by the AQ Small Business Assistance Program'' (hereinafter, ''Oregon's SBAP Confidentiality Guidance''). This document requires the PROGRAM to be operated independently of Oregon's air program enforcement efforts and requires the PROGRAM to restrict access by Oregon air enforcement staff to information regarding violations detected through onsite technical assistance visits to small businesses.

EPA has reviewed Oregon's SBAP Confidentiality Guidance and believes that it meets the conditions that apply to State's choosing the confidentiality option. Specifically, Oregon's SBAP Confidentiality Guidance is an official policy that establishes independence between the PROGRAM and the Oregon air enforcement program; it restricts access by Oregon air enforcement staff to information regarding violations detected through onsite technical assistance visits to small businesses; it requires the PROGRAM to report general statistical and other information about small business compliance to the Department of Environmental Quality and requires the PROGRAM to track

[2] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

compliance progress where it identifies violations during onsite technical assistance; the Department retains full discretion to take enforcement action against violations documented independently of onsite technical assistance visits; and Oregon's PROGRAM is subject to the eligibility requirements of Section 507(c) of the Clean Air Act. In summary, EPA believes that ORS 468A.330(4)(a), when implemented in accordance with Oregon's SBA Confidentiality Guidance, is consistent with EPA's SBA Enforcement Guidance.

III. This Action

In this action, EPA approves the SIP revision submitted by the State of Oregon. The State of Oregon has submitted a SIP revision implementing each of the required PROGRAM elements required by Section 507 of the CAA. The Program is currently being implemented. EPA is therefore approving this submittal.

IV. Administrative Review

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.

By this action, the EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved in this action does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small business entities affected.

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, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 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 estimated costs to State, local, or tribal governments in the aggregate; or to 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 approval action promulgated 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 Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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 November 6, 1995 unless, within 30 days of its publication, 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 notice that will withdraw the final action. All public comments received will 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 November 6, 1995.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Small Business Assistance Program.

Dated: August 8, 1995.

Charles Findley,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (112) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(112) On November 16, 1992, the Director for the Oregon Department of Environmental Quality (ODEQ) submitted the Oregon State Small Business Stationary Source Technical and Environmental Compliance Assistance Program and on May 16, 1995, the Administrator for ODEQ submitted the Small Business Assistance Program Confidentiality Option as revisions to the Oregon State Implementation Plan.

(i) Incorporation by reference.

(A) The November 16, 1992 letter from the Director of the Oregon Department of Environmental Quality submitting the Small Business Stationary Source Technical and Environmental Compliance Assistance Program to EPA; The Oregon Air Quality Small Business Assistance Program State Implementation Plan Revision adopted on October 16, 1992, and evidence that the State has the necessary legal authority, Oregon Revised Statutes 468A.330 (Small Business Stationary Source Technical and Environmental Compliance Assistance Program).

(B) The May 16, 1995 letter from the Administrator of the Oregon Department of Environmental Quality, Air Quality Division, submitting the Small Business Assistance Program confidentiality option to EPA; The Air Quality Guidance, Restriction of Information Obtained by the AQ Small Business Assistance Program adopted on May 16, 1995.

[FR Doc. 95–21884 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WV31–1–7063a; FRL–5278–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia, 45CSR35, Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and Part D of the Clean Air Act (CAA). The intended effect of this action is to approve the SIP revision of West Virginia General Conformity Rule. This action is being taken under section 110 of the CAA.

DATES: This final rule is effective November 6, 1995 unless notice is received on or before October 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597–3164, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On November 23, 1994, the State of West Virginia submitted a formal revision to its State Implementation Plan (SIP) to EPA for the purpose of meeting the requirements of 40 CFR 51.851, General Conformity. West Virginia had adopted an emergency rule (45CSR35) that adopts the provisions of federal General Conformity Rule (40 CFR Part 93, Subpart B), which was effective on November 16, 1994. The exact same version of 45CSR35, the General Conformity Rule, was submitted to the West Virginia legislature for permanent authorization. On May 16, 1995, the State of West Virginia submitted the final SIP revision of 45CSR35 to EPA, promulgated as final legislative rule in accordance to West Virginia law, that became effective on May 1, 1995. (Note: The Transportation Conformity Rule submitted on May 16, 1995 is the subject of a separate rulemaking action.)

Summary of SIP Revision

West Virginia's rule 45CSR35, Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity), adopts the requirements of 40 CFR Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans by incorporating these federal regulations by reference. The federal rule was promulgated by EPA to implement Section 176(c) of the CAA, as amended (42 U.S.C. 7401 et seq.) which requires that all federal actions conform to applicable air quality implementation plans. This rule only applies to areas designated nonattainment or maintenance areas under the CAA, as amended.

This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and Part D of the CAA. The rule generally applies to federal actions except: (1) Those required under the transportation conformity rule (40 CFR Part 93, Subpart A); (2) Actions with associated emissions below specified de minimis levels; and (3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

Some examples of federal actions requiring conformity determination include: Airport Construction/Modification grants; Leasing of Federal Land; Granting a Permit; Construction of Federal Office Buildings; Private Construction on Federal Land; Prescribed Burning; Reuse of Military Bases; and Water Treatment Plants.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document elsewhere in this **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 6, 1995 unless, by 30 days of October 5, 1995 adverse or critical comments are received.

If 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. 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 on November 6, 1995.

Final Action

EPA is approving the final SIP revision of 45CSR35, submitted by the State of West Virginia on May 16, 1995, which was effective on May 1, 1995.

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

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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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 176 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this 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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action to approve West Virginia's General Conformity Rule must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 19, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(37) to read as follows:

§ 52.2520 Identification of Plan.

* * * * *

(c) * * *

(37) Revisions to the West Virginia State Implementation Plan submitted on May 16, 1995 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of May 16, 1995 from West Virginia Division of Environmental Protection, transmitting the General Conformity Rule.

(B) Title 45, Legislative Rule, Series 35 (45CSR35), Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity), effective May 1, 1995.

(ii) Additional material.

(A) Remainder of May 16, 1995 State submittal pertaining to 45CSR35 referenced in paragraph (c)(37) of this section.

[FR Doc. 95–21881 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7624]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date,

contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Connecticut:				
Clinton, town of, Middlesex County	090061	Mar. 2, 1973, Emerg; Sept. 30, 1980 Reg; Sept. 6, 1995, Susp.	Sept. 6, 1995	Sept. 6, 1995.
Region III				
Pennsylvania:				
California, borough of, Washington County.	420848	July 5, 1974, Emerg; June 15, 1981, Reg; Sept. 6, 1995, Susp.	.....do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Coal Center, borough of, Washington County.	422131	Apr. 17, 1975, Emerg; Sept. 30, 1981, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Greensboro, borough of, Greene County	420477	Dec. 2, 1975, Emerg; Mar. 2, 1989, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Hamilton, township of, Monroe County ..	421888	Mar. 31, 1978, Emerg; Feb. 4, 1988, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Nicholson, township of, Fayette County .	422420	July 29, 1975, Emerg; Sept. 4, 1991, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Washington, township of, Fayette County.	421641	Feb. 21, 1975. Emerg; Jan. 20, 1982, Reg; Sept. 6, 1995, Susp.	.....do	Do.
West Brownsville, borough of, Washington County.	425391	Dec. 3, 1971, Emerg; Apr. 27, 1973, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Region V				
Illinois:				
Beecher, village of, Will County	170696	Dec. 12, 1974, Emerg; Oct. 15, 1982, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Bolingbrook, village of, Will County	170812	June 28, 1974, Emerg; Oct. 15, 1980, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Braidwood, city of, Will County	170848	Mar. 20, 1991, Emerg; Dec. 1, 1992, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Channahon, village of, Will County	170698	Sept. 12, 1975, Emerg; Feb. 15, 1983 Reg; Sept. 6, 1995 Susp.	.....do	Do.
Crest Hill, city of, Will County	170699	Aug. 5, 1974, Emerg; July 16, 1979, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Crete, village of, Will County	170700	May 21, 1975, Emerg; Mar. 2, 1981, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Elwood, village of, Will County	170849	Dec. 23, 1982, Reg; Sept. 6, 1995, Susp. ...	.....do	Do.
Frankfort, village of, Will County	170701	Apr. 11, 1974, Emerg; Nov. 1, 1979, Reg; Sept. 6, 1995 Susp.	.....do	Do.
Joliet, city of, Will County	170702	Apr. 13, 1973, Emerg; Feb. 4, 1981, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Lockport, city of, Will County	170703	Apr. 22, 1975, Emerg; Nov. 17, 1982, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Manhattan, village of, Will County	170704	June 12, 1975, Emerg; Oct. 15, 1982, Susp; Sept. 6, 1995, Susp.	.....do	Do.
Minooka, village of, Will County	171019	Mar. 12, 1992, Reg; Sept. 6, 1995, Susp	.....do	Do.
Mokena, village of, Will County	170705	June 12, 1974, Emerg; Aug. 1, 1979, Reg; Sept. 6, 1995, Susp.	.....do	Do.
New Lenox, village of, Will County	170706	Sept. 19, 1974, Emerg; May 1, 1980, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Peotone, village of, Will County	170709	Aug. 14, 1974, Emerg; Jan. 14, 1983, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Plainfield, village of, Will County	170771	May 21, 1975, Emerg; Nov. 17, 1982, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Rockdale, village of, Will County	170710	May 27, 1975, Emerg; Sept. 15, 1983, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Romeoville, village of, Will County	170711	July 2, 1975, Emerg; Nov. 3, 1982, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Shorewood, village of, Will County	170712	May 15, 1974, Emerg; Nov. 1, 1979, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Symerton, village of, Will County	170714	Apr. 18, 1975, Emerg; June 30, 1976, Reg; Sept. 6, 1995, Susp.	.....do	Do.
University Park, village of, Will County ..	170708	Sept. 24, 1974, Emerg; July 16, 1980, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Wilmington, city of, Will County	170715	Aug. 7, 1974, Emerg; July 16, 1981, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Will County, unincorporated areas	170695	Apr. 22, 1974, Emerg; Apr. 15, 1982, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Michigan:				
Brownstown, charter township, Wayne County.	260218	Aug. 23, 1974, Emerg; Aug. 16, 1982, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Region VI				
New Mexico:				
Dona Ana County, unincorporated areas	350012	Jan. 19, 1976, Emerg; Sept. 27, 1991, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Las Cruces, city of, Dona Ana County. ..	355332	July 24, 1970, Emerg. June 11, 1971, Reg; Sept. 6, 1995, Susp.	.....do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VIII				
Utah:				
Riverdale, city of, Weber County	490190	Oct. 4, 1974, Emerg; Feb. 3, 1982, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Weber County, unincorporated areas	490187	Mar. 25, 1975, Emerg; July 19, 1982, Reg; Sept. 6, 1995, Susp.	.....do	Do.
Region I				
Massachusetts:				
Avon, town of, Norfolk County	250231	Nov. 14, 1975, Emerg; May 15, 1980, Reg; Sept. 20, 1995, Susp.	Sept. 20, 1995	Sept. 20, 1995.
Region II				
New Jersey:				
Allendale, borough of, Bergen County	340019	June 2, 1972, Emerg; July 2, 1979, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Bergenfield, borough of, Bergen County	340020	Jan. 7, 1972, Emerg; June 1, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Bogota, borough of, Bergen County	340021	July 7, 1975, Emerg; Apr. 1, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Carlstadt, borough of, Bergen County	340022	June 9, 1975, Emerg; Aug. 31, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Closter, borough of, Bergen County	340023	June 5, 1975, Emerg; Apr. 18, 1983 Reg; Sept. 20, 1995, Susp..	.....do	Do.
Cresskill, borough of, Bergen County	340024	May 30, 1975, Emerg; Dec. 1, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Demarest, borough of, Bergen County	340025	June 24, 1975, Emerg; Sept. 30, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Dumont, borough of, Bergen County	340026	Jan. 14, 1972, Emerg; Sept. 15, 1977 Reg; Sept. 20, 1995, Susp.	.....do	Do.
East Rutherford, borough of, Bergen County.	340028	June 4, 1975, Emerg; Dec. 16, 1980, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Edgewater, borough of, Bergen County	340029	Sept. 25, 1975, Emerg; Apr. 1, 1983, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Elmwood Park, borough of, Bergen County.	340500	May 26, 1972, Emerg; Nov. 15, 1979, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Emerson, borough of, Bergen County	340030	Feb. 25, 1972, Emerg; Sept. 30, 1980, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Englewood, city of, Bergen County	340031	Dec. 29, 1972, Emerg; Feb. 19, 1986 Reg; Sept. 20, 1995, Susp.	.....do	Do.
Fair Lawn, borough of, Bergen County	340033	Apr. 4, 1974, Emerg; July 2, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Fairview, borough of, Bergen County	340034	July 16, 1975, Emerg; Aug. 2, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Franklin Lakes, borough of, Bergen County.	340036	May 6, 1975, Emerg; Aug. 15, 1984, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Garfield, city of, Bergen County	340037	May 5, 1972, Emerg; Apr. 15, 1980, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Glen Rock, borough of, Bergen County	340038	Feb. 12, 1975, Emerg; July 2, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Hackensack, city of, Bergen County	340039	Oct. 2, 1974, Emerg; Dec. 1, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Hackensack Meadowlands District, Bergen County.	340570	Jan. 3, 1975, Emerg; Dec. 15, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Harrington Park, borough of, Bergen County.	340040	Apr. 16, 1975, Emerg; Apr. 15, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Hasbrouck Heights, borough of, Bergen County.	340041	July 8, 1975, Emerg; June 30, 1976, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Haworth, borough of, Bergen County	340042	Mar. 31, 1975, Emerg; Oct. 15, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Hillsdale, borough of, Bergen County	340043	Nov. 19, 1971, Emerg; Dec. 15, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Ho-Ho-Kus, borough of, Bergen County	340044	Jan. 14, 1972, Emerg; June 1, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Leonia, borough of, Bergen County	340045	Aug. 25, 1975, Emerg; July 5, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Little Ferry, borough of, Bergen County	340046	July 21, 1975, Emerg; June 15, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Lodi, borough of, Bergen County	340047	Apr. 21, 1972, Emerg; Feb. 15, 1978, Reg; Sept. 20, 1995, Susp.	.....do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Lyndhurst, township of, Bergen County	340048	July 2, 1975, Emerg; June 15, 1978, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Mahwah, township of, Bergen County	340049	Oct. 13, 1972, Emerg; Nov. 3, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Maywood, borough of, Bergen County	340050	May 26, 1972, Emerg; Aug. 15, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Midland Park, borough of, Bergen County.	340051	May 26, 1972, Emerg; Sept. 30, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Montvale, borough of, Bergen County	340052	May 2, 1975, Emerg; Sept. 30, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Moonachie, borough of, Bergen County	340053	Apr. 30, 1975, Emerg; Mar. 18, 1983, Reg; Sept. 20, 1995, Susp.	.....do	Do.
New Milford, borough of, Bergen County	340054	Feb. 25, 1972, Emerg; Apr. 1, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
North Arlington, borough of, Bergen County.	340055	July 3, 1975, Emerg; Apr. 3, 1978, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Northvale, borough of, Bergen County	340056	Jan. 15, 1974, Emerg; Jan. 20, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Norwood, borough of, Bergen County	340057	May 30, 1975, Emerg; Apr. 18, 1983, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Oakland, borough of, Bergen County	345309	June 30, 1970, Reg; Sept. 20, 1995, Susp	.....do	Do.
Old Tappan, borough of, Bergen County	340059	Oct. 6, 1972, Emerg; Apr. 15, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Oradell, borough of, Bergen County	340060	Nov. 24, 1972, Emerg; Mar. 15, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Palisades Park, borough of, Bergen County.	340061	May 22, 1975, Emerg; June 1, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Paramus, borough of, Bergen County	340062	Feb. 11, 1972, Emerg; June 1, 1984, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Park Ridge, borough of, Bergen County	340063	Feb. 19, 1975, Emerg; May 5, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Ramsey, borough of, Bergen County	340064	Jan. 21, 1974, Emerg; Sept. 2, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Ridgefield, borough of, Bergen County	340065	Jan. 14, 1972, Emerg; Mar. 15, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Ridgefield Park, village of, Bergen County.	340066	May 8, 1975, Emerg; Oct. 15, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Ridgewood, village of, Bergen County	340067	Nov. 12, 1971, Emerg; Dec. 15, 1983, Reg; Sept. 20, 1995, Susp.	.....do	Do.
River Edge, borough of, Bergen County	340068	Feb. 9, 1973, Emerg; Feb. 1, 1984, Reg; Sept. 20, 1995, Susp.	.....do	Do.
River Vale, township of, Bergen County	340069	Jan. 7, 1972, Emerg; Oct. 15, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Rochelle Park, township of, Bergen County.	340070	Feb. 16, 1973, Emerg; Mar. 28, 1980, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Rockleigh, borough of, Bergen County	340071	Jan. 20, 1975, Emerg; May 17, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Rutherford, borough of, Bergen County	340072	July 2, 1975, Emerg; June 1, 1978, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Saddle Brook, township of, Bergen County.	340074	June 10, 1974, Emerg; Apr. 15, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Saddle River, borough of, Bergen County.	340073	Mar. 10, 1972, Emerg; May 16, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
South Hackensack, township of, Bergen County.	340515	Aug. 11, 1975, Emerg; Mar. 2, 1983, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Teaneck, township of, Bergen County	340075	May 2, 1975, Emerg; Oct. 16, 1984, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Tenafly, borough of, Bergen County	340076	Apr. 21, 1975, Emerg; Feb. 17, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Upper Saddle River, borough of, Bergen County.	340077	Apr. 12, 1974, Emerg; Sept. 15, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Waldwick, borough of, Bergen County	340078	Mar. 31, 1972, Emerg; Mar. 1, 1979, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Wallington, borough of, Bergen County	340079	June 18, 1975, Emerg; June 4, 1980, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Washington, township of, Bergen County.	340080	Sept. 17, 1975, Emerg; Nov. 19, 1980, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Westwood, borough of, Bergen County	340081	Dec. 17, 1971, Emerg; Feb. 4, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Wood-Ridge, borough of, Bergen County.	340083	Sept. 1, 1972, Emerg; Aug. 11, 1978, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Woodcliff Lake, borough of, Bergen County.	340082	July 15, 1975, Emerg; Sept. 2, 1981, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Wyckoff, township of, Bergen County	340084	Dec. 17, 1971, Emerg; Aug. 1, 1977, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Virgin Islands:				
Island of St. John	780000	Oct. 6, 1975, Emerg; Oct. 15, 1980, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Region III				
Pennsylvania:				
Cumberland, township of, Greene County.	421188	Jan. 27, 1976, Emerg; July 1, 1986, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Dunkard, township of, Greene County ...	422431	Feb. 22, 1984, Emerg; Oct. 5, 1984, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Luzerne, township of, Fayette County	421631	Feb. 10, 1975, Emerg; Mar. 1, 1982, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Monongahela, city of, Washington County.	420856	May 14, 1971, Emerg; July 3, 1986, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Rivesville, town of, Marion County	540105	Apr. 18, 1975, Emerg; Mar. 16, 1988, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Region IV				
South Carolina:				
Edgefield County, unincorporated areas	450229	July 12, 1991, Emerg; Apr. 1, 1993, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Region V				
Ohio:				
Bluffton, village of, Allen County	390004	June 19, 1975, Emerg; Sept. 20, 1995, Susp.	.....do	Do.
Region IX				
California:				
Shasta County, unincorporated areas	060358	Feb. 21, 1979, Emerg; Sept. 27, 1985, Reg; Sept. 20, 1995, Susp.	.....do	Do.
Region I				
Connecticut:				
New Britain, city of, Hartford County	090032	Aug. 22, 1973, Emerg; July 16, 1981, Reg; Sept. 30, 1995, Susp.	9–30–95	Sept. 30, 1995.
Massachusetts:				
Mattapoisett, town of, Plymouth County .	255214	June 18, 1971, Emerg; Mar. 16, 1973, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Rhode Island:				
Charlestown, town of, Washington County.	445395	Oct. 30, 1970, Emerg; July 13, 1972, Reg; Sept. 30, 1995, Susp.	.....do	Do.
New Shoreham, town of, Washington County.	440036	Oct. 16, 1975, Emerg; Apr. 3, 1985, Reg; Sept. 30, 1995 Susp.	.....do	Do.
Portsmouth, town of, Newport County ...	445405	July 30, 1971, Emerg; Aug. 24, 1973, Reg; Sept. 30, 1995, Susp.	.....do	Do.
South Kingstown, town of, Washington County.	445407	Sept. 11, 1970, Emerg; June 23, 1972, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Tiverton, town of, Newport County	440012	Aug. 18, 1972, Emerg; May 2, 1977, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Region II				
New Jersey: Monroe, township of, Middlesex County	340269	Feb. 25, 1973, Emerg; Apr. 17, 1985, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Region III				
Pennsylvania:				
Donora, borough of, Washington County	420851	July 29, 1974, Emerg; June 10, 1980, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Fallowfield, township of, Washington County.	422148	Oct. 15, 1975, Emerg; Feb. 17, 1989, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Jefferson, township of, Fayette County ..	421629	Feb. 28, 1977, Emerg; June 1, 1979, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Orange County, unincorporated areas ...	510203	Apr. 7, 1975, Emerg; Sept. 10, 1984, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Monongalia County, unincorporated areas.	540139	Oct. 31, 1975, Emerg; May 1, 1984, Reg; Sept. 30, 1995, Susp.	.....do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IV				
Tennessee:				
Franklin County, unincorporated areas ..	470344	June 12, 1991, Emerg; Jan. 2, 1992, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Hamilton County, unincorporated areas .	470071	Mar. 3, 1972, Emerg; Aug. 1, 1979, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Region V				
Michigan:				
Port Austin, township of, Huron County .	260290	Apr. 17, 1974, Emerg; Jan. 1, 1992 Reg; Sept. 30, 1995, Susp.	.....do	Do.
Minnesota:				
Brooklyn Park, city of, Hennepin County	270152	Feb. 5, 1974, Emerg; May 17, 1982, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Ohio:				
Highland Heights, city of, Cuyahoga County..	390110	Nov. 10, 1976, Emerg; June 1, 1979, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Region VII				
Kansas:				
Dodge City, city of, Ford County	205184	June 4, 1971, Emerg; May 19, 1972, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Ford County, unincorporated areas	200101	Mar. 26, 1981, Emerg; July 3, 1986, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Region IX				
Arizona:				
Avondale, city of, Maricopa County	040038	Aug. 25, 1975, Emerg; June 15, 1979, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Buckeye, town of, Maricopa County	040039	Dec. 17, 1974, Emerg; Feb. 15, 1980, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Carefree, town of, Maricopa County	040126	Dec. 31, 1970, Emerg; July 2, 1979, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Cave Creek, town of, Maricopa County .	040129	June 9, 1988, Reg; Sept. 30, 1995, Susp ...	.....do	Do.
Chandler, city of, Maricopa County	040040	May 16, 1975, Emerg; July 16, 1980, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Coconino County, unincorporated areas	040019	Feb. 18, 1975, Emerg; Nov. 16, 1983, Reg; Sept. 30, 1995, Susp.	.....do	Do.
El Mirage, city of, Maricopa County	040041	Aug. 8, 1975, Emerg; Dec. 1, 1978, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Flagstaff, city of, Maricopa County	040020	Jan. 15, 1975, Emerg; Jan. 19, 1983, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Gila Bend, town of, Maricopa County	040043	May 16, 1975, Emerg; Dec. 4, 1979, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Gilbert, town of, Maricopa County	040044	June 10, 1975, Emerg; Jan. 16, 1980, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Glendale, city of, Maricopa County	040045	Mar. 20, 1975, Emerg; Apr. 16, 1979, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Goodyear, city of, Maricopa County	040046	Aug. 8, 1975, Emerg; July 17, 1979, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Guadalupe, town of, Maricopa County ...	040011	Apr. 1, 1994, Reg; Sept. 30, 1995, Susp	.....do	Do.
Litchfield Park, city of, Maricopa County	040128	Aug. 19, 1988, Reg; Sept. 30, 1995, Susp ..	.....do	Do.
Maricopa County, unincorporated areas	040037	Dec. 31, 1970, Emerg; July 2, 1979, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Paradise Valley, town of, Maricopa County.	040049	Sept. 15, 1972, Emerg; May 1, 1980, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Phoenix, city of, Maricopa County	040051	Dec. 17, 1971, Emerg; Dec. 4, 1979, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Scottsdale, city of, Maricopa County	045012	Mar. 26, 1971, Emerg; Sept. 21, 1973, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Surprise, town of, Maricopa County	040053	Mar. 26, 1976, Emerg; Dec. 15, 1978, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Tempe, city of, Maricopa County	040054	Nov. 17, 1974, Emerg; Aug. 15, 1980, Reg; Sept. 30, 1995, Susp.	.....do	Do.
Hawaii:				
Honolulu, city and county of, Honolulu County.	150001	June 5, 1970, Emerg; Sept. 3, 1980, Reg; Sept. 30, 1995, Susp.	.....do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Kauai County, unincorporated areas	150002	Apr. 2, 1971, Emerg; Nov. 4, 1981, Reg; Sept. 30, 1995, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: August 25, 1995.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–21925 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–21–P

44 CFR Part 64

[Docket No. FEMA–7625]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies a community where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that is suspended on the effective date listed within this rule because of failure to enforce floodplain management requirements of the program. If FEMA receives documentation of remedial measures taken prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The effective date of the community's suspension is the third date (''Susp.'') listed in the fourth column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The community listed in this document no longer meet the statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the community will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, the community may submit the required documentation of the remedial measures taken after this rule is published but prior to the actual suspension date. The community will not be suspended and will continue its eligibility for the sale of insurance. A notice withdrawing the suspension of the community will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in the community by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the community listed on the date shown in the last column.

The Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because the community listed in this final rule have been adequately notified.

This community received a 90-day and two 30-day notifications addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Asssociate Director certified that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Regulatory Classification

This rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987, 3 CFR, 1987 Comp., p.252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VI				
Texas:				
Hunt County, unincorporated areas	480363	June 15, 1990, Emerg; Sept. 4, 1991, Reg. Sept. 6, 1995, Susp.	Sept. 4, 1991	Sept. 6, 1995

Code for reading third column: Emerg.— Emergency; Reg.— Regular; Rein.— Reinstatement; Susp.— Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: August 25, 1995.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–21927 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–21–P

44 CFR Part 65

[Docket No. FEMA–7152]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Coconino	City of Flagstaff	July 20, 1995, July 27, 1995, *Arizona Daily Sun*.	The Honorable Chris Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	June 19, 1995	040020
Pima	Unincorporated Areas.	July 7, 1995, July 14, 1995, *Tucson Citizen*.	The Honorable Paul Marsh, Chairman, Pima County Board of Supervisors, 130 West Congress Street, Tucson, Arizona 85701.	June 14, 1995	040073
Pima	City of Tucson	July 13, 1995, July 20, 1995, *Arizona Daily Star*.	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85710–7210.	June 26, 1995	040076
California:					
Riverside	City of Corona	July 19, 1995, July 26, 1995, *Corona Independent*.	The Honorable Jeff Bennett, Mayor, City of Corona, P.O. Box 940, Corona, California 91718.	June 20, 1995	060250
Alameda	City of Livermore	July 13, 1995, July 20, 1995, *Tri-Valley Herald*.	The Honorable Cathie Brown, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550–4899.	June 19, 1995	060008
Riverside	City of Riverside	July 19, 1995, July 26, 1995, *Press Enterprise*.	The Honorable Ron Loveridge, Mayor, City of Riverside, 3900 Main Street, Riverside, California 92522.	June 19, 1995	060260
Riverside	Unincorporated Areas.	July 19, 1995, July 26, 1995, *Press Enterprise*.	The Honorable Kay Ceniceros, Chairperson, Riverside County Board of Supervisors, P.O. Box 1359, Riverside, California 92502–1359.	June 19, 1995	060245
Colorado:					
Arapahoe	Unincorporated Areas.	July 13, 1995, July 20, 1995, *The Villager*.	The Honorable Thomas R. Eggert, Chairperson, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.	June 20, 1995	080011
Boulder	City of Boulder	July 13, 1995, July 20, 1995, *Daily Camera*.	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	June 14, 1995	080024
Boulder	Unincorporated Areas.	July 20, 1995, July 27, 1995, *Daily Camera*.	The Honorable Homer Page, Chairperson, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306.	June 19, 1995	080023
Boulder	City of Longmont	July 20, 1995, July 27, 1995, *Times Call*.	The Honorable Leona Stoecker, Mayor, City of Longmont, Civic Center Complex, 350 Kimbark Street, Longmont, Colorado 80501.	June 19, 1995	080027
Louisiana:					
St. Mary Parish	City of Morgan City	July 19, 1995, July 26, 1995, *Daily Review*.	The Honorable Timothy I. Matte, Mayor, City of Morgan City, P.O. Box 1218, Morgan City, Louisiana 70381.	June 28, 1995	220196
New Mexico:					

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Bernalillo	City of Albuquerque	July 18, 1995, July 25, 1995, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	June 23, 1995	350002
Texas:					
Dallas	City of Dallas	July 13, 1995, July 20, 1995, *Dallas Morning News.*	The Honorable Steve Bartlett, Mayor, City of Dallas, 1500 Marilla Street, Room 5E North, Dallas, Texas 75201.	June 14, 1995	480171
El Paso	City of El Paso	July 14, 1995, July 21, 1995, *El Paso Times.*	The Honorable Larry Francis, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	June 16, 1995	480214
Lubbock	City of Lubbock	July 20, 1995, July 27, 1995, *Lubbock Avalanche-Journal.*	The Honorable David Langston, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457.	June 29, 1995	480452

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21923 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7148]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Tolland	Town of Somers	June 30, 1995, July 7, 1995, *Journal Enquirer*.	Mr. Robert Pereoski, First Selectman of the Town of Somers, Town Hall, P.O. Box 308, Somers, Connecticut 06071.	June 16, 1995	090112
Maryland: Queen Annes.	Unincorporated Areas	June 28, 1995, July 5, 1995, *The Star-Democrat and Bay Times*.	Mr. Mark Belton, President of the Queen Annes County Commissioners, 107 North Liberty Street, Centreville, Maryland 21617.	June 22, 1995	240054 C
Minnesota: Hennepin	City of Hopkins	June 28, 1995, July 5, 1995, *Hopkins Sun Sailor*.	Mr. Steve Mielke, Manager of the City of Hopkins, 1010 1st Street South, Hopkins, Minnesota 55343.	Dec. 19, 1995	270166 B
Mississippi:					
Madison	City of Madison	June 8, 1995, June 15, 1995, *Madison County Herald*.	The Honorable Mary Hawkins, Mayor of the City of Madison, P.O. Box 40, Madison, Mississippi 39138–0040.	May 31, 1995	280229 D
Madison	Unincorporated Areas	June 8, 1995, June 15, 1995, *Madison County Herald*.	Mr. David Richardson, President of the Board of Supervisors for Madison County, P.O. Box 404, Canton, Mississippi 39046.	May 31, 1995	280228 D
New Hampshire: Grafton.	Town of Littleton	June 14, 1995, June 21, 1995, *The Courier*.	Mr. Donald A. Craigie, Chairman of the Board of Selectmen, 1 Union Street, Littleton, New Hampshire 03561.	June 9, 1995	330064
South Carolina: Richland.	Unincorporated Areas	June 16, 1995, June 23, 1995, *The State*.	Mr. W. Anthony McDonald, Richland County Administrator, P.O. Box 192, Columbia, South Carolina 29202.	June 9, 1995	450170 G
Tennessee:					
Shelby	City of Memphis	June 23, 1995, June 30, 1995, *The Commercial Appeal*.	The Honorable W. W. Herenton, Mayor of the City of Memphis, City Hall, Room 200, 125 North Main Street, Memphis, Tennessee 38103.	June 15, 1995	470177 E
Shelby	Unincorporated Areas	June 23, 1995, June 30, 1995, *The Commercial Appeal*.	Mr. Jim Kelly, Shelby County Chief Administrative Officer, 160 North Main Street, Memphis, Tennessee 38103.	June 15, 1995	470214 E

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21917 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montana: Flathead (FEMA Docket No. 7139).	Unincorporated Areas .	March 16, 1995, March 23, 1995, *Daily Inter Lake*.	The Honorable Sharon L. Stratton, Chairman, Flathead County Board of Commissioners, 800 South Main Street, Kalispell, Montana 59901.	Mar. 3, 1995	300023

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21924 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Indiana: Hamilton (FEMA Docket No. 7104).	Town of Westfield.	July 6, 1994, July 13, 1994, *Daily Ledger*.	Mr. Jerry Rosenberger, Westfield Town Manager, 130 Penn Street, Westfield, Indiana 46074.	June 28, 1994	180083 C
Michigan: Macomb County (FEMA Docket No. 7135).	City of Sterling Heights.	February 12, 1995, February 19, 1995, *The Source*.	The Honorable Richard J. Notte, Mayor of the City of Sterling Heights, 40555 Utica Road, P.O. Box 8009, Sterling Heights, Michigan 48311–8009.	February 2, 1995	260128 E

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Mississippi: Oktibbeha County (FEMA Docket No. 7135).	Unincorporated Areas.	February 15, 1995, February 22, 1995, *Starkville Daily News*.	Mr. David Oswalt, President of the Oktibbeha County, Board of Supervisors, 101 East Main Street, Starkville, Mississippi 39759.	February 8, 1995	280277 B
New Hampshire: Belknap County (FEMA Docket No. 7135).	Town of Tilton.	February 15, 1995, February 22, 1995, *Laconia Citizen*.	Mr. Kenneth Money, Senior Selectman for the Town of Tilton, 145 East Main Street, Tilton, New Hampshire 03276.	February 8, 1995	330009 B
Rhode Island: Bristol County (FEMA Docket No. 7135).	Town of Barrington.	February 22, 1995, March 1, 1995, *Barrington Times*.	Mr. Dennis M. Phelan, Barrington Town Manager, 283 County Road, Barrington, Rhode Island 02806.	February 14, 1995	445392 E
South Carolina: Richland County (FEMA Docket No. 7135).	Unincorporated Areas.	February 10, 1995, February 17, 1995, *The State*.	Mr. W. Anthony McDonald, Richland County Administrator, P.O. Box 192, Columbia, South Carolina 29202.	May 18, 1995	450170 G

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21918 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
DELAWARE	
Dewey Beach (town), Sussex County (FEMA Docket No. 7124)	
Atlantic Ocean:	
Approximately 100 feet east of intersection of Read Avenue and State Route 1.	Depth 2′
Maps available for inspection at the Town Hall, 105 Rodney Avenue, Dewey Beach, Delaware.	
Fenwick Island (town), Sussex County (FEMA Docket No. 7124)	
Atlantic Ocean:	
Approximately 500 feet east of the intersection of James Street and State Route 1.	*13
Approximately 100 feet west of the intersection of Essex Street and Bunting Avenue.	Depth 2′
Maps available for inspection at the Town Hall, 800 Coastal Highway, Fenwick Island, Delaware.	
Sussex County, (unincorporated areas) (FEMA Docket No. 7124)	
Atlantic Ocean:	
Approximately 100 feet east of the intersection of Palmer Avenue and State Route 1.	Depth 2′
Maps available for inspection at the Planning and Zoning Office, Courthouse Circle, Georgetown, Delaware.	
MAINE	
Anson (town), Somerset County (FEMA Docket No. 7136)	
Kennebec River:	
Approximately 5,580 feet downstream of U.S. Route 201A, and U.S. Route 8, 43, and 148.	*201
Approximately 3 miles upstream of the confluence of Carrabassett River.	*275
Carrabassett River:	
At the confluence with Kennebec River.	*270
Approximately 0.56 mile upstream of the confluence with Big Brook.	*345
Getchell Brook:	
Approximately 180 feet downstream of State Routes 43 and 148 (Main Street).	*258
Approximately 545 feet upstream of State Routes 43 and 148 (Main Street).	*258
Maps available for inspection at the Anson Town Hall, Main Street, Anson, Maine.	
Holden (town), Penobscot County (FEMA Docket No. 7136)	
Brewer Lake:	
Entire shoreline within community.	*112
Davis Pond:	
Entire shoreline within community.	*199
Holbrook Pond:	
Entire shoreline within community.	*199
Maps available for inspection at the Holden Town Office, 1460 Main Road, East Holden, Maine.	
Madison (town), Somerset County (FEMA Docket No. 7128)	
Kennebec River:	
At downstream corporate limits.	*193
At Approximately 500 feet upstream of upstream corporate limits.	*275
Jones Brook:	
At confluence with Kennebec River.	*234
At approximately 0.66 mile downstream of Jones Street.	**276
Cold Brook:	
At approximately 1,800 feet downstream of Snowmobile bridge.	*205
At approximately 30 feet upstream of Snowmobile bridge.	*206
Hayden Brook:	
Approximately 50 feet upstream of the confluence with Wesserunsett (Hayden) Lake.	*338
At approximately 60 feet upstream of U.S. Route 201.	*357
Unnamed Brook:	
At approximately 0.3 mile downstream of U.S. Route 201.	*267
At approximately 0.24 mile upstream of U.S. Route 201.	*319
Maps available for inspection at 26 Weston Avenue, Madison, Maine.	
MICHIGAN	
Plymouth (charter township), Wayne County (FEMA Docket No. 7130)	
Middle River Rouge:	
Approximately 2,100 feet downstream of I–275 (At downstream corporate limits).	*667
Approximately 1,000 feet upstream of Pheonix Dam (At upstream corporate limits).	*731
Maps available for inspection at the Township Hall, 42350 Ann Arbor Road, Plymouth, Michigan.	
Plymouth (city), Wayne County (FEMA Docket No. 7130)	
Middle River Rouge:	
Approximately 400 feet downstream of Edward Hines Drive (Downstream of corporate limits).	*671
Approximately 600 feet upstream of Mill Street.	*709
Maps available for inspection at the City Hall, 201 South Main Street, Plymouth, Michigan.	
NEW YORK	
Potsdam (village), St. Lawrence County (FEMA Docket No. 7136)	
Raquette River:	
Approximately 240 feet upstream of downstream corporate limits.	*399
Approximately 320 feet downstream of upstream corporate limits.	*411
Maps available for inspection at the Code Enforcement Office, Park and Elm Streets, Potsdam, New York.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OHIO	
Oakwood (village), Paulding County (FEMA Docket No. 7130)	
Auglaize River:	
Approximately 0.5 mile downstream of Norfolk and Southern Railroad.	*711
Approximately 0.6 mile upstream of State Route 613.	*712
Maps available for inspection at the Village Hall, 228 North First Street, Oakwood, Ohio.	
Paulding County, (unincorporated areas) (FEMA Docket No. 7130)	
Maumee River:	
Approximately 0.6 mile downstream of downstream county boundary.	*695
Approximately 0.2 mile upstream of upstream county boundary.	*724
Auglaize River:	
Approximately 880 feet upstream of confluence of Flatrock Creek.	*704
At upstream county boundary.	*715
Flatrock Creek/Auglaize River Overflow Channel:	
At upstream of County Route 171.	*704
At diversion from Auglaize River.	*706
Maps available for inspection at the Paulding County Commissioners Office, 115 North William Street, Paulding, Ohio.	
PENNSYLVANIA	
Fayette City (borough), Fayette County (FEMA Docket No. 7128)	
Monongahela River:	
At the downstream corporate limits (Approximately 675 feet downstream of Downers Run).	*766
At the upstream corporate limits (Approximately 1,050 feet upstream of Lamb Lick Run).	*767
Maps available for inspection at the Borough Hall, 238 Main Street, Fayette City, Pennsylvania.	
Dickinson (township), Cumberland County (FEMA Docket No. 7128)	
Yellow Breeches Creek:	
Approximately 1,050 feet downstream of Burnthouse Road (T–474).	*533
At upstream corporate limits	*597
Yellow Breeches Creek Northern Split:	
At confluence with Yellow Breeches Creek.	*558
At divergence from Yellow Breeches Creek.	*569
Maps available for inspection at the Township Building, 219 Mountain View Road, Mount Holly Springs, Pennsylvania.	
Hampden (township), Cumberland County (FEMA Docket No. 7130)	
Navy Ship Parts Control Center Drainage Channel:	
At the confluence with Trindle Spring Run.	*378
Approximately 0.4 mile upstream of the second Gabion Dam.	*417
Maps available for inspection at the Hampden Township Building, 230 South Sporting Hill Road, Mechanicsburg, Pennsylvania.	
Mount Holly Springs (borough), Cumberland County (FEMA Docket No. 7130)	
Mountain Creek:	
Approximately 900 feet downstream of Conrail.	*538
Approximately 300 feet downstream of upstream corporate limits.	*601
Maps available for inspection at the Mount Holly Springs Municipal Building, 200 Harmon Street, Mount Holly Springs, Pennsylvania.	
North Charleroi (borough), Washington County (FEMA Docket No. 7128)	
Monongahela River:	
Downstream corporate limits (approximately 1,000 feet downstream of Monessen-North Charleroi bridge).	*761
Upstream corporate limits (approximately 1,600 feet upstream of Monessen-North Charleroi bridge).	*762
Maps available for inspection at the Borough Secretary's Office, 301 Isabelle Avenue, North Charleroi, Pennsylvania.	
Oneida (township), Huntingdon County (FEMA Docket No. 7130)	
Juniata River:	
At the Borough of Huntingdon northern corporate limits.	*638
Approximately 1,100 feet upstream of the northern corporate limits of the Borough of Huntingdon.	*639
Standing Stone Creek:	
At the southern corporate limits of the Borough of Huntingdon.	*615
Approximately 500 feet upstream of the southeastern corporate limits of the Borough of Huntingdon.	*615
Maps available for inspection at the Township of Oneida, Stone Creek Road, Oneida, Pennsylvania.	
Orange (township), Columbia County (FEMA Docket No. 7116)	
Fishing Creek:	
Approximately 280 feet downstream of State Route 487.	*581
Approximately 0.46 mile upstream of State Route 487.	*591
Maps available for inspection at the Township Municipal Building, By appointment—call Suzanne Moore (717) 683–5554.	
Rices Landing (borough), Greene County (FEMA Docket No. 7128)	
Monongahela River:	
Approximately 0.9 mile downstream of the confluence of Pumpkin Run (At the downstream corporate limits).	*785
Approximately 0.88 mile upstream of the confluence of Pumpkin Run (At the upstream corporate limits).	*786
Maps available for inspection at the Borough Building, 100 Water Street, Rices Landing, Pennsylvania.	
South Middleton (township), Cumberland County (FEMA Docket No. 7130)	
Mountain Creek:	
Approximately 650 feet upstream of confluence with Yellow Breeches Creek.	*506

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1.1 miles upstream of the Borough of Mount Holly Springs southern corporate limits.	*613
Maps available for inspection at the Township Building, 520 Park Drive, Boiling Springs, Pennsylvania.	
Speers (borough), Washington County (FEMA Docket No. 7116)	
Monongahela River:	
Approximately 0.70 mile downstream of CONRAIL bridge.	*764
Approximately 0.75 mile upstream of Interstate 70 ramp.	*765
Maps available for inspection at the Borough Building, 300 Phillips Street, Speers, Pennsylvania.	
Stockdale (borough), Washington County (FEMA Docket No. 7128)	
Monongahela River:	
Downstream corporate limits.	*767
Upstream corporate limits ...	*768
Maps available for inspection at the Borough Building, 438 Locust Street, Stockdale, Pennsylvania.	
Union (township), Washington County (FEMA Docket No. 7128)	
Monongahela River:	
At downstream corporate limits.	*752
At upstream corporate limits	*755
Maps available for inspection at the Municipal Building, Finleyville-Elrama Road, Union, Pennsylvania.	
WEST VIRGINIA	
Westover (city), Monongalia County (FEMA Docket No. 7128)	
Monongahela River:	
At confluence of Dents Run	*813
Approximately 560 feet upstream of U.S. Route 19 (Westover Bridge).	*814
Dents Run:	
At confluence with Monongahela River.	*813
Approximately 0.71 mile above confluence with Monongahela River.	*813
Maps available for inspection at the City Hall, 500 Dupont Road, Westover, West Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21916 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 94–07]

Financial Reporting Requirements and Rate of Return Methodology in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations governing financial reporting requirements and rate of return methodology applicable to vessel-operating common carriers by water in the domestic offshore trades to discontinue use of the comparable earnings test in determining the reasonableness of a carrier's return on rate base. In its place, the Commission will use the weighted average cost of capital methodology. The Commission is modifying the calculation of the rate of return on rate base to a before-tax basis. In addition, the Commission is amending its rules pertaining to the computation of working capital. The rule addresses a number of shipper and carrier concerns regarding the Commission's current rate of return methodology and would align the Commission's ratemaking methodologies more closely with those used by numerous other regulatory agencies. The intent is to improve the Commission's methodology for evaluating the reasonableness of rates filed by carriers in the domestic offshore trades.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT:

Richard R. Speigel or Anne M. McAloon, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, 202–523–5845 or 523–5790

C. Douglass Miller, Office of the General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, 202–523–5740

SUPPLEMENTARY INFORMATION: On April 7, 1994, the Federal Maritime Commission (''FMC'' or ''Commission'') published a Notice of Proposed Rulemaking (''NPR'' or ''proposed rule'') (59 FR 16592) which proposed to amend the regulations governing financial reporting requirements and rate of return methodology applicable to vessel-operating common carriers by water in the domestic offshore trades. The Commission proposed to change the method of determining the reasonableness of a carrier's return on rate base from the comparable earnings test (''CET'') to the weighted average cost of capital (''WACC'') methodology. At the request of Matson Navigation Company (''Matson''), the Commission extended the comment period for interested parties to file until July 20, 1994 (59 FR 27002). The following seven parties filed comments on the NPR: American President Lines (''APL''), Crowley Maritime Corporation (''Crowley''), Matson, Puerto Rico Maritime Shipping Authority (''PRMSA''), the Department of Transportation (''DOT''), Marsoft Incorporated (''Marsoft''), and the State of Hawaii (''Hawaii'').

By notice published November 4, 1994, 59 FR 55232 (''Request for Reply Comments''), the Commission invited reply comments on four specific issues—the calculation of the cost of capital, working capital, the selection of proxy groups, and the deletion of alternative methodologies. The Commission extended the time for reply comments until January 6, 1995, partially granting a request of NPR, Inc. (59 FR 62372). Reply comments were received from APL, Crowley, Matson, PRMSA, Hawaii, and Tobias E. Seaman (''Seaman''), president of the National Association of Shippers, Consignees, and Consumers for Maritime Affairs. With the exception of Seaman, all reply commenters had submitted initial comments on the proposed rule.

PRMSA and NPR filed a motion for an evidentiary hearing on December 2, 1994. The Commission does not believe that there is a need to hold an evidentiary hearing as suggested by PRMSA and NPR. There have been two rounds of comments which have given

all interested parties, including PRMSA and NPR, adequate opportunity to comment on the proposed rule.

The commenters raised concerns with many provisions of the proposed rule. The Commission has addressed all relevant comments. Any comment not specifically addressed has nevertheless been considered.

The Weighted Average Cost of Capital Approach

Comments: The commenters generally support the adoption of the WACC methodology for determining the allowable rate of return on rate base. Crowley does not support, however, the change to the WACC methodology for the following reasons. Crowley argues that the WACC methodology contained in the NPR does not correct the alleged shortcomings of the CET, because the WACC methodology will also rely on a proxy group to determine the regulated carrier's cost of capital. Crowley further urges caution in the Commission's deliberations because of the uncertainty over the Interstate Commerce Commission's (''ICC'') continued jurisdiction over intermodal services and the Government of Puerto Rico's continued attempts to sell PRMSA. Crowley also contends that the rule would raise the cost of regulatory compliance substantially. Crowley disputes, as being too low, the Commission's estimate of the additional regulatory burden of the proposed rule (*i.e.*, 1.5 weeks), because substantially more effort would be required in the first years as the carriers learn the new system. In his comments, Seaman echoes Crowley's opposition to the proposed rule.

In its initial comments, PRMSA urged the Commission to require carriers initially to provide parallel testimony and information which would permit analysis under both the CET and the WACC methodologies. In its reply comments, however, PRMSA states that no need exists for the parallel CET analysis should the FMC decide to be less restrictive in specifying the permissible evidence in rate-of-return proceedings, and instead, permit carriers to submit evidence as to their demonstrated risk and, hence, their required rate of return.

Both PRMSA and Matson argue that setting the maximum allowable rate of return on rate base equal to the carrier's weighted average cost of capital would not provide the regulated carriers with sufficient earnings to fund their operations and attract capital. PRMSA urges the Commission to adopt provisions which would allow an earnings ''cushion'' above the before-tax weighted average cost of capital (''BTWACC'').[1] PRMSA states that its required rate of return was less than that of the CET reference group, because it is 100 percent debt-financed and tax-exempt. Thus, it is said that PRMSA gained a tax advantage over the CET reference group. The earnings which the reference group devoted to tax payments was allegedly the ''cushion'' for PRMSA. The result, PRMSA states, is that the CET allows earnings levels which, when achieved, provide PRMSA with the ability to remain in business.

However, PRMSA maintains that the proposed BTWACC yields an untenable result for PRMSA, because it would strip away the earnings cushion which provides the ability to service debt which was acquired to finance past losses. PRMSA argues that this lack of an earnings ''cushion'' would be potentially harmful to any company with substantial debt in its capital structure. PRMSA contends that the allowable rate of return must provide a sufficient cushion above the cost of overall debt to permit the carrier to weather a downturn in its business.

Matson states that the Commission's definition of the cost of capital is the minimum rate of return necessary to attract capital to an investment. Matson also notes that in the proposed rule the maximum allowable return on rate base is the weighted average cost of capital. Matson claims that using the cost of capital to determine the allowable return on rate base sets the Commission's BTWACC as both the minimum and the maximum rate of return for the regulated carrier. Matson claims that for this to be correct, capital markets must be perfectly efficient. Matson claims that since it is recognized that capital markets are not perfectly efficient, by itself the BTWACC is not an adequate measure of the return on capital necessary to attract capital to the regulated carrier.

Matson claims that since the cost of capital is a minimum rate of return necessary to attract capital to the regulated firm, the Commission should allow carriers to earn returns equal to their cost of capital plus a specified margin in excess. Matson states that the extra earnings above the cost of capital that carriers in the domestic trades would be given the opportunity to earn would not be ''gouging'' the public. Matson states that the carriers in the domestic offshore trades face competitive market conditions, and thus the carrier's ability to meet customer needs will determine what return the carrier will earn from its operations. Matson claims that modifying the proposed rule to allow for a cushion above the BTWACC would permit Matson to attract capital to finance the assets necessary to continue and to enhance its operations.

Discussion: Crowley is correct that both the CET and BTWACC methodologies generally need to use some form of proxy group. However, for the following reasons, the Commission is convinced that the types of information used to calculate the BTWACC provide a better estimate than the CET of the allowable rate of return for each individual carrier. First, the BTWACC uses information specific to the regulated carrier's capital structure to calculate the carrier's required rate of return. Second, the BTWACC uses either the regulated carrier's cost of common-stock equity or a related proxy group's cost of common-stock equity to determine the required rate of return on equity, rather than the averages derived from all manufacturing firms that are used under the CET. Similarly, the BTWACC calculates the actual coupon payments for debt paid by the regulated carrier, rather than a proxy derived from a rolling average of Baa-rated corporate bonds. Therefore, the specificity that the BTWACC gives in determining the cost of capital of the individual regulated carrier is a vast improvement over the CET.

Crowley's claims of additional regulatory burden appear to be overstated. Under the proposed rule, if a carrier filed a general rate increase, the extra regulatory burden is estimated to be 24 staff-hours. An additional 41 staff-hours would have been required for the annual filing of the proxy group. Thus, the proposed rule estimated the increase in regulatory burden to be 41 to 65 staff-hours. The additional regulatory burden under the proposed rule, then, was quite modest. The Commission believes these estimates to be accurate approximations of the additional time necessary to comply with the final rule. Some firms may take more time while other firms may take less time, but on average the Commission believes that the estimates are accurate for the typical firm.

However, the Commission is concerned that any additional regulatory burden required under the final rule be minimized. Therefore, as will be discussed later, the requirement that carriers annually file a proxy group has been dropped in the final rule and the procedure for estimating the cost of equity has been changed. Under the final rule, a carrier that does not file a general rate increase will incur no extra regulatory burden because it need not

[1] The BTWACC is a before-tax version of the WACC.

file a proxy group. In addition, one of the three methods used to estimate the cost of equity, the Capital Asset Pricing Model, will no longer be required. These modifications to the proposed rule will result in a significant lessening of the regulatory burden. If the carrier does file a general rate increase, the extra regulatory burden remains 65 staff-hours. The Commission believes that the improvement in rate-of-return regulation which will occur under the BTWACC methodology more than compensates for the extra staff-hours of regulatory burden which will be incurred by those carriers which file a general rate increase. Therefore, the Commission rejects the suggestion by Crowley and Seaman that the Commission abandon its proposal to implement a BTWACC approach to determine the allowable rate of return in the domestic trades.

As will be discussed in the following sections, the Commission is modifying its proposed rule to allow for greater flexibility in the determination of the cost of common-stock equity. This modification should eliminate the need perceived by PRMSA in its initial comments that both the BTWACC and CET be utilized initially to determine an appropriate rate of return.

The NPR explained the legal and economic rationale for setting the allowable rate of return equal to the regulated carrier's cost of capital. Two landmark Supreme Court cases [2] established that investors in companies subject to rate regulation must be allowed an opportunity to earn returns sufficient to attract capital comparable to investments in other firms having the same amount of risk, and that revenues must not only cover operating expenses, but capital costs as well. The economic rationale for setting the allowable rate of return of a regulated company equal to its cost of capital is that in the long run the regulated firm's customers will pay the lowest cost for service while at the same time the company's earnings will be sufficient to attract capital so that the company is able to provide the customers' desired level of service. Based on the legal decisions and economic rationale, the Commission considers the BTWACC an appropriate measure of the allowable rate of return for regulated carriers. The Commission believes that the BTWACC methodology will allow carriers to attract adequate capital, thereby negating the concerns expressed by Matson. However, as PRMSA noted, a carrier with only debt financing would be allowed only to earn the cost of its long-term debt under the BTWACC.[3] It appears that such a capital structure is highly unusual and unlikely to occur without substantial government backing of the carrier (as has been the case with PRMSA).

PRMSA is unique among ocean carriers in the domestic offshore trades in that, until its recent sale to NPR in January 1995, it was government owned and 100 percent debt-financed. PRMSA contends that it lost money year after year and part of its debt was used to finance past losses.[4] While a regulatory commission should minimize regulatory risk by ensuring that regulated firms are given the opportunity to earn a reasonable return on capital, it is the responsibility of the firm to achieve a viable capital structure and operate the business efficiently. The BTWACC is an appropriate measure of the cost of capital for carriers having a broad range of capital structures. The Commission cannot prevent a carrier from departing from the broad range of capital structures that are generally used. However, the Commission must assure that ratepayers do not pay a premium for such a decision by the carrier. Therefore, the Commission believes that ratepayers should not be required to pay for an additional ''cushion'' due to PRMSA's unique capital structure.

Lastly, as a further clarification the Commission will state in its rule that the BTWACC is the ''allowable'' rate of return rather than the ''maximum allowable'' rate of return.

Accessibility of Carrier Financial Data

Hawaii argues that the adoption of the BTWACC methodology will require that all parties have access to information regarding the carrier's financing and capitalization. Such information is company specific and can be obtained only through the carriers' annual financial reports filed with the Commission. Hawaii recommends that the Commission reverse its present policy of not requiring the carriers' annual reports to be made available to all parties.[5] However, the issue was not raised in the NPR and there has been no opportunity for the other parties to comment on Hawaii's recommendation. Accordingly, it would not be proper for the Commission to rule on the merits of Hawaii's recommendation here.

Hawaii also requests the right of discovery by all parties, so that any questions which may arise concerning the carrier's financial situation may be pursued. Rule 67 of the Commission's rules of practice and procedure (46 CFR 502.67) currently provides for discovery in proceedings under section 3(a) of the Intercoastal Shipping Act, 1933 (''1933 Act'') 46 U.S.C. app. 845 (a). Hawaii's request fails to explain why Rule 67 is deficient. In any event, an amendment to Rule 67 is outside the scope of this proceeding and cannot be properly addressed here.

Deletion of Alternative Methodologies

The proposed rule revised paragraph (b) of § 552.1 by deleting the provision that the methodology employed in each case will depend on the nature of the relevant carrier's operations and financial structure. Also, the proposed rule added language to the paragraph that specifies the extent of possible alternative methodologies. Paragraph (b) reads:

> (b) In evaluating the reasonableness of a VOCC's overall level of rates, the Commission will use return on rate base as its primary standard. A carrier's allowable rate of return on rate base will be set equal to its before-tax weighted average cost of capital. However, the Commission may also employ the other financial methodologies set forth in § 552.6(f) in order to achieve a fair and reasonable result.

Paragraph (d) of the same section has been deleted. That paragraph provided that the Commission may use some other basis for allocation and calculation and may consider other operational factors in any instance where it is deemed necessary to achieve a fair and reasonable result.

APL advised, in its initial comments, that these provisions are at the heart of a major dispute in FMC Docket No. 89–26, The Government of the Territory of Guam, et al. v. Sea-Land Service, Inc. and American President Lines, Ltd. It pointed out that the NPR does not give any reasons for the proposed changes to § 552.1 and argued that the changes cannot be legally adopted unless and until the FMC identifies its reasons for such a change and allows opportunity for comment. Further, APL pointed out that the proposed changes could have no effect on a pending complaint docket focused on a prior time period.

In the Request for Reply Comments, the Commission explained that the Guam trade is unique in that the trade is a very small portion of the carriers' overall service. Whether the current

[2] *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923) and Federal Power Commission v. Hope Natural Gas Company,* 320 U.S. 391 (1944).

[3] If a carrier is 100% debt-financed, the equity portion of the BTWACC equation equals 0.

[4] Similar to Crowley, PRMSA has filed many of its rates in ICC-regulated or exempt tariffs since 1981, the last year in which that carrier's rates were subject to an FMC investigation.

[5] Section 552.4(c) of the Commission's regulations protects the carrier's annual reports from public disclosure and treats them as confidential information in the files of the Commission.

method of allocation is appropriate in such a case need not be decided in this proceeding because the two carriers serving Guam, APL and Sea-Land Service, Inc., currently file most of their rates with the ICC. Neither carrier files full financial reports under 46 CFR part 552. If in the future a carrier serves Guam under FMC regulation, the Commission could address the need for any change in 46 CFR part 552 in a separate rulemaking proceeding. Paragraph (d) of § 552.1 was eliminated because the Commission did not want such determinations to be made on an ad hoc basis during a rate investigation. It is essential that significant issues relating to the underlying methodology to be employed in determining the reasonableness of rates be settled prior to any rate investigation. The 180-day limit specified by section 3 of the 1933 Act cannot be met if parties are permitted to change methodologies during the course of a rate investigation. Moreover, the Commission stated in its Request for Reply Comments that parties to a rate proceeding are entitled to rely on the Commission's rules. They should not have to respond to ever-changing methodologies proposed by other parties. The Commission also explained that any changes that may be made to part 552 as a result of this proceeding will only be applied prospectively and will have no application in pending cases such as Docket No. 89–26.

Both APL and Matson support the proposed changes to § 552.1. APL urges the FMC, in discussing the reply comments in this proceeding, to ''avoid overbroad statements that might be argued to have application to pre-existing complaint dockets as opposed to GRI proceedings.'' (APL Reply at 3.) Matson concurs with the Commission that it is essential that significant issues relating to the underlying methodology to be used in determining the reasonableness of rates be settled prior to any investigation.

Crowley argues that it is not clear that the Commission has adequately preserved its option of using other rate-of-return methodologies ''in order to achieve a fair and reasonable result.'' The carrier suggests that, while certainty in predicting the Commission's reaction to a proposed rate increase is important, it should not be achieved at the expense of the Commission's flexibility to consider legitimate alternatives for measuring a carrier's rate of return.

Seaman does not comment on the merits of the proposed changes to this section, but rather repeats his opinion that the alternative methodologies should be applied to Matson's operations in the Hawaii trade. He further claims, as APL did in its initial comments, that because the NPR did not give any explanation for the proposed changes, the due process rights of those affected are violated.

Crowley's and Seaman's concerns that methodologies other than rate of return on rate base be available appear to be overstated. The Commission believes that the proposed methodology should be appropriate for almost any conceivable situation. Moreover, neither Crowley nor Seaman provide sufficient reasons for altering the proposed changes to § 552.1. The flexibility they appear to seek simply cannot be accommodated within the 180-day limit specified by section 3 of the 1933 Act. Further, neither Crowley nor Seaman have addressed the fact that it is not fair to require parties to respond to ever-changing methodologies proposed by other parties. Therefore, unless the Commission prescribes an alternative methodology in its order commencing a rate investigation, all parties will be limited to the use of rate of return on rate base throughout the proceeding. The changes to § 552.1 will be adopted as proposed.

Capital Structure

The Proposed Rule

The proposed rule provided that a regulated domestic offshore carrier's expected capital structure is to be used in calculating that carrier's BTWACC. In the case of a regulated carrier that is a subsidiary of a larger parent company, the proposed rule provided that a subsidiary carrier's capital structure be used in computing the BTWACC unless, after notice and opportunity for comment, the Commission determines that the carrier may use the capital structure of the parent company (i.e., the consolidated system). Such a determination would require that: (1) The subsidiary carrier's parent company issues publicly traded common stock equity; (2) no substantial minority interest in the subsidiary exists;[6] and (3) the risks are similar between the subsidiary carrier and the parent company.[7] The NPR also proposed that the capitalization ratios (i.e., the weights) used in calculating the BTWACC be based on the test-year average book value.

Comments: Hawaii agrees that the expected capital structure should be used when a company is an independent company. In the case of wholly owned subsidiaries,[8] however, Hawaii recommends that the FMC allow greater flexibility in adopting the appropriate capital structure. Hawaii suggests that the Commission not declare a preference for either the subsidiary or consolidated financial data but avail itself of the option to decide, on a case-by-case basis, whether to use the subsidiary, consolidated system,[9] or a hypothetical capital structure. By deciding on a case-by-case basis, Hawaii contends that the FMC will avoid prejudging which method will allow the most accurate estimation of the carrier's cost of capital.

Hawaii points out two potential drawbacks of using subsidiary data. The first drawback would be the need for a portfolio of comparable companies. Hawaii contends that finding a comparable group may be problematic or impossible within the framework of the proposed rule.

The second drawback would be the possible artificiality of the capital structure of a subsidiary. Hawaii points out a situation it has encountered in which the capital structure of a subsidiary is reported to consist of all equity. The parent company holds and sells all debt, but the proceeds of the debt are used by the subsidiary. Hawaii states that it has

> no *a priori* reason to believe that data from a portfolio of comparable companies is a better base from which to estimate a carrier's cost of capital than data from the consolidated system of which a carrier is a part. There are necessarily pros and cons in a choice between the characteristics of a consolidated company, within which the characteristics of the relevant company are hidden, and a portfolio of proxy companies which may bear little resemblance to the relevant company.

(Hawaii at 7). Hawaii suggests that the choice between two inappropriate

[6] Under the proposed rule, no substantial minority interest in a subsidiary carrier would exist when a parent company owns 90 percent or more of the subsidiary's voting shares of stock.

[7] In considering the similarity of both business and financial risks facing the parent and subsidiary, the following will be considered: Financial risk measures, such as total capitalization and debt/equity ratios, investment quality ratings on short and long term debt instruments; and coverage ratios, such as times interest earned and fixed charges coverage ratios, and the degree to which the regulated subsidiary comprises the parents' holding.

[8] Hawaii couched its comments on a wholly owned subsidiary in terms of Matson Navigation Co., Inc., which is a subsidiary of Alexander & Baldwin, Inc.

[9] Hawaii requested clarification on the issue of whether all parties have the option to apply for the use of the consolidated system. The Commission anticipates that only the regulated carrier will be able to apply for use of the consolidated system's capital structure. In addition, the Commission's staff may also recommend the use of the consolidated system. Such application or recommendation will be subject, however, to notice and comment prior to Commission approval. It appears that interested parties will be provided with ample opportunity to comment on this issue.

capital structures could be avoided by using a hypothetical capital structure.

Hawaii also points out the interrelationship between the capital structure and the required rate of return on equity. As the share of equity increases in the capital structure, financial risk and total risk are lessened. Thus, the required rate of return on equity declines as the proportion of equity increases, all other things being equal.

With respect to the NPR's provision for basing the capitalization ratios and amounts on average book values, PRMSA asserts that the capital structure using historic book valuation may differ significantly from a capital structure computed using market valuation.[10] Depending on how the book value of equity deviates from its market value, the Commission may be allowing a rate of return that is either too high or too low.

Discussion: The Commission is not persuaded by Hawaii's argument to decide the capital structure on a case-by-case basis. The Commission believes the capital structure of the subsidiary will generally be the most direct measure of the regulated carrier's capital structure. However, where the regulated carrier can show that the business and financial risk of the parent company and the subsidiary are similar, the Commission may allow the use of the consolidated system's capital structure because its cost of capital will likely be the same as the subsidiary's cost of capital. Moreover, the calculation of the consolidated system's cost of capital will be more direct because there will be no need to select a proxy group to estimate the cost of common-stock equity. Thus, in some cases, the use of the consolidated system's capital structure will likely give the best measure of the regulated carrier's capital structure.

With respect to hypothetical capital structures, some regulatory commissions do use a hypothetical capital structure. However, the Commission believes that good reasons exist for using the actual capital structure rather than a hypothetical capital structure. First, capital structures are the products of decisions, which may be assumed to be logical and efficient at the time they are made, although a different capitalization might be consistent with a lower BTWACC at the time of investigation and hearing. Second, the hypothetical capital structure substitutes the judgment of the regulator for the judgment of those operating the business as to the best mix of debt and equity for the company. The initial decision as to the best debt/equity mix should be left to the company management, with regulatory oversight by the Commission.

A review of regulatory commission practice indicates that, in general, the actual capital structure is used, unless that structure is wasteful or not otherwise in the long-term public interest. In cases where the Commission might find evidence of wasteful or imprudent investment, it is permitted to deduct such investment from the carrier's rate base.[11] Therefore, the Commission believes that it has ample authority to deal with imprudent or wasteful investment without employing a hypothetical capital structure.

In situations in which the Commission determines that the capital structure of a subsidiary does not represent the true capitalization of a carrier (e.g., debt ''hidden'' in a parent company's capital structure), the Commission believes that it has adequate options for ensuring that the subsidiary's capital structure reflects its financing. First, the Commission can order that the capital structure of the consolidated system be used. If the consolidated system consists of a number of subsidiaries or its capital structure is very complex, the Commission can fashion an appropriate proceeding to determine the appropriate capital structure. At the conclusion of the proceeding, the Commission would weigh all the information it had collected to determine the most realistic and meaningful capital structure possible for the regulated carrier. The Commission does not believe, however, that such proceedings will be necessary in most cases.

The NPR recognized that valid theoretical reasons exist for measuring the capital structure on the basis of the market value of its components. However, the common practice of regulatory commissions is to compute capitalization ratios on the basis of book values for a number of practical considerations. First, a regulated firm is believed to raise capital in such a fashion that a target capitalization ratio expressed on the basis of book values is maintained by the company over time. Consequently, regulators must compute the firm's overall cost of capital on the same basis to ensure that the company's capital costs are adequately covered. Second, effective regulation is said to result in book and market values approaching equality. Last, and most importantly, book-value capitalization ratios are stable, removing the problems that volatile market prices can present when determining the appropriate capitalization ratio. The Commission remains convinced that the practical considerations outweigh the theoretical issues involved in using book-value capitalization ratios. Therefore, the process of determining the regulated carrier's capital structure is adopted without change from the proposed rule.

Calculation of the Before-Tax Weighted Average Cost of Capital

In its initial comments, PRMSA pointed out that the formula for the BTWACC[12] is inconsistent with the Commission's formula for the rate of return on rate base.[13] This inconsistency resulted from computing the cost of capital on a before-tax basis while the rate of return on rate base is computed on an after-tax basis. PRMSA further commented that the after-tax rate of return formula currently used by the Commission and retained in the proposed rule is technically deficient; because, in the numerator, it adds the full amount of interest expense to income. PRMSA noted that more modern financial analysis recognizes that only the after-tax cost of interest should be added back to the numerator in computing after-tax rate of return. PRMSA suggested either changing the cost of capital to an after-tax basis so it can be compared to the after-tax return on rate base, or retaining the BTWACC

[10] PRMSA's initial comments on this issue continued its characterization of the Commission's reasons for proposing a change from the CET to the BTWACC as resulting from a desire to eschew the use of accounting data in favor of the use of market data. PRMSA contends that because the proposed rule relies extensively on historic accounting data, the shortcomings of the CET are perpetuated in the proposed rule.

[11] Likewise, the Commission may disallow questionable expense items for a carrier's income statement.

[12] The proposed rule states the before-tax weighted average cost of capital will be calculated using the following equation.

$$BTWACC=(D/D+P+E)K_d+(P/D+P+E)K_p(1/1-T)+(E/D+P+E)K_e\ (1/1-T)$$

where:

K_d is the regulated firm's cost of long-term debt capital;

K_p is the regulated firm's cost of preferred stock capital;

K_e is the regulated firm's cost of common-stock equity capital;

D is the value of the regulated firm's long-term debt outstanding;

P is the value of the regulated firm's preferred stock outstanding;

E is the value of the regulated firm's common-stock equity outstanding;

T is the corporate income tax rate

[13] Current FMC regulations (46 CFR 552.6 (d)(2)) provide that return on rate base is computed by dividing Trade net income plus interest expense by Trade rate base.

and changing the rate of return on rate base to a before-tax basis.

In the Request for Reply Comments, the Commission proposed retaining the BTWACC contained in the NPR and changing the calculation of the rate of return on rate base to a before-tax basis. Comments were sought on the following change to § 552.6(d)(2):

(2) Return on Rate Base. The return on rate base will be computed by dividing Trade net income plus interest expense plus provision for income taxes by Trade rate base.

In its reply comments, Hawaii recognizes the basis for PRMSA's concern that the proposed BTWACC and the rate of return on rate base are not directly comparable. However, Hawaii prefers that the proposed rule be changed so the weighted average cost of capital is computed on an after-tax basis and the rate of return on rate base remain as it is currently defined in the Commission's rule. According to Hawaii, the Commission's current definition of return on rate base embodies the conventional idea of payment (or return) to lenders and equity holders who have advanced the money for capital purchases. Payments to governments in taxes on revenue and earnings from the employment of the purchased capital are not strictly ''returns'' and it would distort the concept to include tax payments in the definition.

Crowley and Matson comment favorably on the proposed change to the rate of return on rate base. Although Seaman opposes the proposed methodology for calculating the allowable rate of return, he acknowledges the comparability problem.

All parties have recognized that a change must be made to either the calculation of the BTWACC or the calculation of the rate of return on rate base to make the two terms compatible. The Commission believes that putting the BTWACC and the rate of return on rate base on a before-tax basis will result in the appropriate determination of the allowable rate of return. The Commission's research indicates that most regulatory agencies determine the allowable rate of return on a before-tax basis. While Hawaii expresses a preference for using the after-tax calculation, it agreed that putting the weighted average cost of capital and the rate of return on rate base either on a before-tax basis or after-tax basis is correct as long as the two terms are compatible. Therefore, the Commission will adopt a BTWACC and modify the calculation of the return on rate base as indicated in the Request for Reply Comments.

Cost of Equity Estimation

The NPR specified that three methods of determining the cost of common-stock equity—the discounted cash flow (''DCF''), capital asset pricing model (''CAPM''), and risk premium (''RP'') methods—would be used to produce separate estimates in arriving at a final estimate of a regulated carrier's cost of common-stock equity capital. The Commission would thereby avoid any inappropriate judgments that could be embodied in any one of the individual estimates.

Both Matson and PRMSA contend that the DCF is unsuitable for FMC-regulated carriers, because most of those carriers are either subsidiaries of larger entities or privately owned firms. PRMSA avers that choosing a proxy group for the regulated carriers is impossible, therefore, the DCF and also the CAPM methods are not valid methods for the FMC to use in estimating the cost of equity.

In both sets of comments, PRMSA criticizes the derivation of the expected annual growth in dividends per share, or ''g'', as specified in the NPR. The NPR provides that in the DCF model three methods of estimating ''g'' would be used: (a) The average of the historical growth rate of dividends per share, earnings per share, and book value per share; (b) the average of (1) the five-year dividend, earnings and book value forecasts published by Value Line Investment Survey (''Value Line''), and (2) the five-year earnings forecast published by the Institutional Brokers Estimation Service (''IBES''); and (c) the use of the sustainable growth rate method, which relies on forecasted values of the earnings retention rate. To derive a final estimate of ''g'' the separate estimates of ''g'' would be averaged.

PRMSA states that there is no certain method to ascertain ''g'' directly. To the extent that ''g'' is wrong, the cost of capital is incorrectly estimated. Further, PRMSA states that the proposed averaging of the estimates has no theoretical or practical basis and might be ''contra-indicated'' when the disparities between the estimates are large. In its comments, PRMSA used data from one carrier, Overseas Shipping Group, to derive an estimate of ''g'' based on the methodology prescribed in the proposed rule. PRMSA showed that the historic growth rate method resulted in an estimate for ''g'' of 20.4 percent, while the sustainable growth rate estimate of ''g'' was 11.2 percent. According to PRMSA, the results of its study demonstrate that the methodology used in the proposed rule will likely result in widely divergent results among the three estimation procedures. PRMSA asserts that averaging these numbers results in a meaningless estimate. It argues that since many of the numbers are derived from historical book value, the proposed methodology offers no advantage over the CET, which involves looking directly at history and basing judgments directly thereon. PRMSA contends that the frailties of the methodology cannot be remedied by averaging.

Several commenters point out deficiencies in the CAPM model. Hawaii does not oppose its use, but notes that many regulatory analysts are moving away from using the CAPM as a cost of equity model. Hawaii suggests that the use of the CAPM in a regulatory rate setting removes it from its intended purposes.[14] Hawaii also states that the most salient criticisms of CAPM lie with its central element, beta.[15] Hawaii states that these criticisms include the following: (1) Beta is a measure of variability not risk; (2) beta is not forward looking (in keeping with a future test year); (3) betas typically have very low correlation coefficients; and (4) recently it has been shown that there is no statistical relationship between beta and return. PRMSA also notes that the CAPM literature has begun to question the model's empirical underpinnings. Matson advises that it is widely acknowledged that the CAPM does not adequately account for firm size in determining expected return.

Matson concurs with the NPR which stated that the DCF, CAPM, and RP each have strengths and weaknesses. However, according to Matson, the RP has an advantage that compels its use. The RP can be adjusted to reflect the fact that the cost of common stock equity is a function of firm size. Matson argues that the NPR's use of the RP[16] is deficient because the risk of investment in a small company, such as Matson, is not the same as that of a Standard & Poor's 500 Stock Index (''S&P 500'') firm.

[14] Hawaii states that the CAPM was developed for, and is widely used in, the estimation of the return probabilities of a diversified stock portfolio relative to the return of the theoretical market.

[15] Beta is the coefficient of regression of a stock's price variability relative to the variability of the whole stock market. It gauges the degree to which an individual stock price moves relative to the overall stock market.

[16] The NPR proposed that the RP method was to be used in its generic form without any adjustments for any possible differences in the risks of the firms contained in the Standard & Poor's 500 Stock Index and that of the regulated carrier.

In both its initial and reply comments, Matson advocates the Commission's adoption of one method to calculate the cost of common-stock equity and urges the adoption of the RP model adjusted for firm size. Matson comments that neither the explanatory text nor the rule language in the NPR indicates how the three estimation methods are to be ''blended'' to arrive at a final cost of common-stock equity estimate. It believes there is inefficiency and unfairness in any system that determines a regulated company's allowable earnings by taking the results of three separate calculations and then, using some unexplained process, arrives at a single result. According to Matson, this unexplained process cannot be understood by the regulated carriers and financial markets. Further, effective judicial review would be problematic.

The RP model advocated by Matson is the arithmetic average return differential between rates of return actually earned on investments in firms of the same size as the carrier, and the five-year Treasury Note. Matson states that the risk premium in such a model should be based on the historical data series ''Decile Portfolios of the NYSE'' published annually in Stocks, Bonds, Bills and Inflation (''Ibbotson Yearbook''), and should directly correspond to that decile that matches the carrier's own size.

Likewise, in its reply comments, PRMSA urges the Commission to use only the RP method to estimate the cost of common-stock equity. PRMSA recommends that the proposed RP method be modified to allow for several adjustments for risk. One such adjustment would be for firm size, similar to that suggested by Matson. It also recommends adjustments for illiquidity (in the case of privately-owned carriers), industry risk, and individual carrier risk (as compared to the industry average for publicly traded firms).

Marsoft comments that the RP model is designed to reflect the return on equity of the large, diverse range of companies included in the S&P 500. Marsoft, therefore, contends that the NPR puts a heavy weight on the assumption that all regulated companies are identical and are no more or less risky than companies included in the S&P 500. In contrast to the suggestions of Matson and PRMSA, Marsoft recommends that the Commission give lower weight to non-specific standards such as the RP model.

In addition to commenting on the specific provisions of the cost of equity estimation models, several commenters contend that the process of estimating the cost of equity is too rigidly prescribed in the NPR. Most commenters point out the importance of allowing judgment to enter into the estimation process.

Marsoft states that the proposed cost of equity methodology is excessively restrictive and is likely to result in biased estimates of the appropriate rate of return on equity. Under the BTWACC methodology, it believes that the Commission will need to exercise considerable judgment in determining the appropriate estimate for the cost of common-stock equity. Marsoft suggests the Commission use information from security analysts, management reports, and other industry-based sources in determining the appropriate rate of return on equity.

Hawaii points out that the NPR's specification of using a six-month average stock price as a base for calculating dividend yield may limit appropriate subjective judgments and preclude Commission consideration of valid information.[17] It suggests that in addition to prescribing that the average stock prices be used in the DCF (and interest rates in the CAPM and RP models), the Commission should also allow parties to use the most recent stock price in calculating the DCF model. Hawaii contends that some financial analysts argue that the use of average stock prices and interest rates may lead to greater forecast error in determining the test year stock price and interest rate than will occur when the most recent stock price and interest rate are used. According to Hawaii, allowing parties to calculate these models using both a six-month average stock price and interest rate, as well as the most recent stock price and interest rate, would add flexibility to the proposed rule and increase the information upon which the Commission could base its judgment.

Hawaii also states in its initial comments that access to several data sources is required to determine the cost of common-stock equity under the proposed rule. One of the required data sources used to compute the DCF model is published by IBES. In addition, data from Ibbotson Associates must be used to compute the CAPM and RP models. Hawaii requests that, depending on the cost of acquiring the necessary data, the Commission consider making both the IBES and Ibbotson Associates data available to non-subscribing parties.

[17] Hawaii commented similarly on the CAPM and RP models. In those models, the NPR specified the use of a six-month average of five-year Treasury note yields.

In drafting the proposed rule, the Commission attempted to specify in detail the calculation of the cost of common-stock equity in order to prevent prolonged debate that would accompany more subjective and flexible methodologies. Under section 3 of the 1933 Act not only must the FMC rule within 180 days, but also carriers and protestants have similar time limits in that hearings must be completed within 60 days.

The commenters have taken issue with the NPR's specification of the estimation methods and have suggested that the proposed rule would unduly limit the amount of information that the Commission could consider in the course of a proceeding, to the detriment of obtaining a just and reasonable result. The Commission believes that these comments have merit. If a party to a proceeding follows a predetermined formula in preparing testimony, the resultant testimony may not contain the necessary judgment required in using these estimating techniques. There are many different applications of these methodologies, and an important part of the estimating procedure is the skill with which the practitioner implements the methodology. As a consequence, the Commission, as decision maker, would not be making the fullest use of the expertise that the testimony could provide in arriving at an appropriate determination of the cost of common-stock equity for the regulated carrier.

The Commission has decided, therefore, to modify the cost of equity estimation procedures contained in § 552.6 of the proposed rule. Carriers will still be required to use the DCF and RP methods to determine the cost of common-stock equity. However, they will not be required to follow the proposed rule's detailed specifications in implementing the techniques.

The Commission has decided to strike the requirement to use the CAPM method. As the NPR explained, the CAPM is actually the company-specific form of the general RP model. The central feature of the CAPM model, beta, has been commented upon disparagingly not only by the instant commenters, but also by an increasing number of academicians. The major criticisms of Beta are that: beta measures variability not risk; beta is not forward looking; and no statistical relationship exists between a firm's beta and its return. Given that the merits of beta and, therefore, the CAPM are increasingly suspect, the Commission does not believe that this deletion will negatively impact upon the FMC's responsibilities under the 1933 Act.

The Commission is not persuaded that the selection of the proxy group is so problematic that the requirement to use the DCF model should be eliminated. The DCF method remains a standard tool used by regulatory agencies to determine cost of common-stock equity in rate cases. The Commission acknowledges that selecting a proxy group may be an extremely controversial matter, given that no two companies have exactly the same risk characteristics. Nevertheless, any alleged arbitrariness should be able to be overcome by a judicious determination of the business and financial risk factors of the regulated carrier. Further, with the requirement to use the CAPM being eliminated, the Commission does not believe that it should limit itself to only one method of estimating the cost of common-stock equity.

The proposed rule provided that the estimate produced by the RP method was to be used as a check on, and in combination with, the company-specific estimates produced using the DCF and CAPM models. With the CAPM being deleted, however, the RP will become more prominent in the determination of the cost of equity. In order to produce a more representative estimate of the risk premium required by investors for a particular carrier, the final rule will permit, but not require, carriers to argue for a risk adjustment for firm size. The final rule also allows for an RP model in its generic form.

In contrast to most commenters, Matson states that the Commission's process of determining the cost of capital is not spelled out clearly enough. The Commission does not agree with Matson on this point. The Commission requires the flexibility to consider all issues relevant to estimating the regulated carrier's cost of capital. The Commission recognizes that each of the methodologies are estimates only and that reasoned judgment is necessary in the process of determining the final estimate of the regulated company's cost of capital. Therefore, the process of combining the estimates of the cost of equity in the final rule will remain as it is in the proposed rule, though only the DCF and RP estimates of the cost of equity will be used to reach a final determination.

If a proceeding is initiated, the Commission will evaluate the testimony of the carrier, the FMC staff, and all protesters in arriving at its decision on the allowable rate of return. The Commission will then issue a ruling that spells out its reasoning so that the parties can see how the Commission arrived at its decision. Therefore, the Commission does not accept Matson's assertion that the process of combining the two estimates of common-stock equity is unfair. The combining process will be arrived at openly and will take into account the vagaries of cost of capital estimation.

With regard to the use of average prices, the Commission stated in the proposed rule that regulatory agencies often use average prices over time rather than a price on a particular day to remove aberrations in stock price movements. Such aberrations could be the result of events internal to the company (e.g., the stock may go ex-dividend) or due to factors external to the company (e.g., political events that affect the price of a firm's stock). The Commission continues to believe that the use of an average will be appropriate in most instances to filter out potential aberrations in stock prices and interest rates. However, to avoid the possibility that use of an average may serve to blind the Commission to significant changes or trends, the rule will permit, but not require, parties to calculate these models using both a six month average stock price and interest rate as well as the most recent stock price and interest rate as suggested by Hawaii.

With respect to the suggestion that the FMC consider providing access to the required data, the Commission has considered this, but has decided that the costs of such information are not prohibitive. Under the final rule no particular data source is required for the DCF analysis. IBES data can be obtained inexpensively from Compuserve, an on-line information provider. The Ibbotson Yearbook and Value Line are available at many libraries or through subscription at nominal cost.

Proxy Group

If a carrier is an independent company which issues no publicly-traded common-stock equity or is a subsidiary that obtains its common-stock equity capital through a parent company, a proxy group of companies must be selected to impute the carrier's cost of common-stock equity. Under the proposed rule, the proxy group is selected from companies listed in Value Line that operate and derive a major portion of their gross revenues primarily as common carriers in the business of freight transportation, and own and operate transportation vehicles or vessels. Further, under the proposed rule, carriers relying on proxy companies are to use the prescribed risk criteria in selecting proxy companies and are to submit their selection of proxy companies, along with their annual report of financial and operating data, as required in § 552.2.

In its initial comments, Hawaii was concerned that the companies in Value Line which satisfy the Commission's criteria for the proxy group do not have business risks similar to those of Matson. Hawaii claimed that these companies are generally consolidated companies; are not dominant in their markets; and do not operate in industries with statutory barriers to entry.

Marsoft stated that according to its research only three marine transportation companies and four trucking companies meet the proposed guidelines for the proxy group. Marsoft did not believe that airlines, railroads, or full-load trucking companies should be included in the proxy group, because they do not provide comparable services. Marsoft also stated that in many cases large, geographically and operationally diverse companies will be compared to small, highly specialized private carriers. Marsoft contends that the comparison may not be credible in some cases. Further, Marsoft urged the Commission to allow non-U.S. based firms to be included in the proxy group.

PRMSA commented that the proxy group should not be restricted to the freight transportation business. PRMSA asserted that equity capital in the regulated carrier competes against the broad spectrum of companies in the economy, not just against companies involved in freight transportation. PRMSA stated that the nature of a company's business is only one ingredient of business risk, not the sole determinant. PRMSA noted that as of June 1994, there were a total of 39 companies listed in Value Line involved in transport by air, truck, water, and railroad. Allegedly, not all of these companies were involved in freight transportation as required by the proposed rule. PRMSA concluded from this that the potential list of comparable companies is highly limited.

In its Request for Reply Comments, the Commission sought specific suggestions on industries other than freight transportation to be added to the current proxy group criteria. In its reply comments, Hawaii concurs with the parties who have suggested that dependence on data for proxy groups reported in Value Line and IBES imposes a limitation on finding appropriate proxy group members. Hawaii is unable to suggest other sources from which the required financial data would be available. However, Hawaii urges the Commission not to unduly limit the data that may be used to present evidence, especially

with respect to the proxy group. Hawaii also points out that undue limitation of the companies that may be used as proxies might introduce the statistical problems inherent in small samples.

Hawaii states that the Commission should not expect to be able to apply the results of estimations based on proxy groups directly to the regulated carrier. It urges the Commission to allow the introduction of information which relates to the comparability of the proxy group and the applicant company. In addition, Hawaii states that if each expert witness is allowed to provide estimates based on different proxy groups, the Commission would gain valuable insight into the impact of various risk characteristics on the cost of common-stock equity.

Matson argues that the Commission should retain the proxy group identified in the NPR and not add other industries. According to Matson, business risk is dependent on the diversification of a business, the cyclicality of its operations, and the operating leverage employed in its business. It suggests that transportation companies generally have similar levels of cyclicality and degrees of operating leverage. Matson claims that it would be extremely difficult to identify companies outside of the transportation industry that have the same amount of cyclicality and degree of leverage as transportation companies.

In its reply comments, PRMSA notes that the most serious deficiency of the proposed rule is the use of the proxy groups to compensate for the lack of market data for non-publicly traded companies. PRMSA points out that most domestic offshore carriers are either privately owned or subsidiaries of larger consolidated systems for which no market data exists. PRMSA asserts that the Commission has embarked on an impossible task in attempting to enumerate specific companies and/or industries to serve as a proxy for the regulated company. PRMSA says that the selection of proxy companies will necessarily be arbitrary, negating the mathematical exactitude that can be achieved under the DCF model.

With respect to the annual submission of proxy groups, PRMSA contends that this proposal would actually require a greater use of agency resources than are currently devoted to rate-of-return analysis in the domestic offshore trades. PRMSA argues that the proposed selection process raises serious due process issues, because it attempts to bar members of the public from challenge at a time when their interests are at stake, because of their failure to have made a challenge when no injury could be alleged.

Crowley advocates opening up the proxy group to companies outside the freight transportation business because, it contends, the key comparison is not the line of business. Crowley notes that companies within the same industry may have different business characteristics, and different attractions to investors. Crowley would, however, restrict the selection to any company listed in Value Line. Crowley also states that other suitable industries would be those characterized by large initial capital investments, seasonal markets, and common carrier operations. Crowley proposes that passenger transportation and certain telecommunications industries might be possible sources of proxy groups.

In Seaman's comments, he notes that the commenting parties have given ample reason why the selection of a proxy group is flawed. Seaman contends that without a comparable portfolio of companies, estimates of the cost of common-stock equity are meaningless. He concludes, therefore, that the Commission will not be able to determine a fair rate of return under the BTWACC methodology.

The Commission does not agree with the contention that the proxy group selection is unworkable. The use of proxy groups is a common regulatory practice, especially in conjunction with the DCF model in estimating cost of common-stock equity. Selecting a proxy group will require, however, an assessment of the regulated carrier's operations and financial status in order to determine the appropriate business and financial risk. The results of this assessment will be used to select companies to be included in the proxy group. Because no two companies will be identical in all aspects of risk, the proposed rule specified a number of risk indicators that might be used in selecting a proxy group.

After carefully reviewing all of the comments on comparable risk companies, the Commission has determined to drop three proposals. First, the Commission has decided that requiring the annual submission of a proxy group of companies which would be subject to notice and approval would expend considerable resources. Little benefit would be gained from the exercise if the regulated carrier were not to file any rate increases during its fiscal year. Thus, the final rule allows for the submission of the proxy group of companies at the same time as the submission of direct testimony in support of a proposed general rate increase.

Second, the Commission has decided not to limit the selection of the proxy group only to companies followed by Value Line. The proposed rule required Value Line to be used because it contains all the data necessary to complete the cost of equity calculations specified in the proposed rule. Since the final rule will not be as specific as the proposed rule in delineating the methods and data sources to be used in estimating the cost of common-stock equity, the Commission believes the need to use only Value Line data is lessened. Therefore, in addition to Value Line, other data sources will be permitted for proxy group selection.

Nevertheless, the Commission believes that Value Line provides the best overall data available for determining a proxy group. It provides analysis of many factors necessary for the selection of comparable risk companies. While Value Line does not cover every company that issues stock, the Commission expects that most proxy group companies will be found in it. The Commission does not want to proscribe the use of companies not followed by Value Line that would make good proxy group members. However, if a party selects proxy group members based on data from sources other than Value Line, the burden is on that party to prove that the data source is reliable and the data are sufficiently detailed to calculate the BTWACC.

Finally, the Commission has decided not to limit the allowable proxy group members only to companies which operate in the transportation industry. The final rule will require that the majority of the proxy companies be companies which operate in the transportation industry. This will allow those giving testimony some latitude in selecting proxy group members from outside the transportation industry.

Crowley is the only commenter suggesting other industries that might be included as candidates for the proxy group. Crowley suggests that proxy group members could be selected from the passenger transportation and telecommunications industries. Crowley offered very little analysis as to why these industries should be included. A thorough analysis would be required to persuade the Commission that companies in these industries would make acceptable proxy group members.

The Commission is concerned that the difficulty commenters had in suggesting alternative industries from which proxy group members might be selected is illustrative of the difficulties that may be found in attempting to find proxy group members outside the transportation industry. Most

commenters, however, were quite concerned that in some cases it may be difficult to select an adequate list of proxy group members within the confines of the transportation industry. To balance these two concerns, some of the proxy group members will be permitted to come from outside the transportation industry. However, a majority of the proxy group members will be required to come from the transportation industry. Those seeking to include companies outside the transportation industry in the proxy group shall have the burden of establishing that the firms selected have business risks comparable to the regulated carrier.

The final rule will continue to require that the proxy group be limited to U.S. companies. In many instances foreign accounting procedures are different from U.S. accounting practices. In order to ensure that accurate estimates of the cost of common-stock equity can be made from the proxy group, the exclusion of foreign companies will continue. Lastly, based on the prior discussion of the concerns regarding the use of beta, two of the risk indicators specified in the proposed rule to be used in selecting the proxy group will be eliminated, the volatility of a company's common-stock price changes as measured by both beta and standard deviation.

Deferred Taxes and the Capital Construction Fund

The proposed rule provided for two amendments to allow for the treatment of deferred taxes in the calculation of rate base. First, the cost of an asset included in the rate base would be reduced by the amount of funds withdrawn from the ordinary income and capital gains components of the Capital Construction Fund (''CCF'').[18] Second, the rate base would be reduced by the amount of deferred taxes, except that portion resulting from the CCF or the expired Investment Tax Credit.

Capital Construction Fund

Matson, Crowley and DOT oppose the Commission's proposal to exclude CCF withdrawals from the rate base. Hawaii's comments appear to support the proposal, although most of its comments address deferred taxes.

The opposition to the proposed treatment of the CCF falls into two main areas. First, several commenters contend that the proposed changes are contrary to the Congressional intent behind the Merchant Marine Act, 1936, 46 U.S.C. app. section 1100, et seq., as amended, which governs the CCF. Matson points out that the Commission recognized the Congressional intent in Docket No. 78–46, Part 512. Financial Reports of Common Carriers by Water in the Domestic Offshore Trades. In that proceeding, Matson states that the Commission gave the reasons for its complete rejection of methodologies which penalized the carrier for using the financing benefits provided by the Merchant Marine Act, 1970. That legislation amended the 1936 Act and, inter alia, extended the CCF provisions to include the domestic offshore carriers. Matson points out that, in Docket No. 78–46, the Commission stated that:

> The Commission is persuaded that the Congress, in enacting the Merchant Marine Act, 1970 sought to provide carriers with tax incentives in order to encourage investment aimed at modernizing and expanding the fleet serving the domestic offshore trades. As MARAD indicated [in its comments], the adoption of the flow-through methodology would not be in accordance with the Congressional intent. Docket No. 78–46, 19 SRR at 1305. (Matson at 8).

Crowley adds that it ''makes no sense for the FMC to take away the benefit of the CCF program, or to steer CCF funds away from the domestic trades, when the program is a part of the basic U.S. government policy to support the U.S. Merchant Marine.'' (Crowley at 8). DOT asserts that the proposed rule would frustrate Congress' intent in establishing the CCF program by directly penalizing companies that participate in the program, which would in turn impede DOT's efforts to maintain and expand the U.S.-flag fleet.

Second, the carriers and DOT contend that the proposed changes in the accounting treatment of the CCF and accumulated deferred taxes are based on a misunderstanding of the actual financial and tax consequences of the CCF and deferred taxes. Crowley argues that the Commission has misconstrued the character of the contributions to the three components of the CCF. In its comments, DOT explained that under the CCF program both deposits from taxable income and any subsequent investment earnings are temporarily sheltered from federal income taxes. These tax benefits are assured only if the deposits and earnings thereon are withdrawn to meet the company's CCF program objectives, principally vessel construction or reconstruction. Any unauthorized withdrawals are fully taxable. The recovery of the tax benefit of CCF deposits is accomplished by reducing the income tax basis of a vessel built with CCF monies. The reduction of the taxable basis of the CCF vessel reduces otherwise allowable depreciation over time which, in turn, increases taxable income, thereby recovering the initial benefits of the CCF deposit. DOT points out that this tax deferral has no connection to the cost of a vessel and therefore, should have no impact on the FMC's determination of a carrier's rate base for setting an allowable rate of return.

Matson contends that the Commission has grossly overstated the benefit of the CCF investment. According to Matson, the sole economic benefit which flows from the use of a CCF is the interest-free use of the deferred tax monies until the taxes are paid through the loss of tax-depreciation on the CCF investment. Matson points out that the tax repayment period is 10 years for vessels, and 5 years for containers. According to Matson, not only has the FMC overstated the benefit but also, the duration of the benefit because its proposal would ''exclude forever 100% of the CCF investment.''

Based on the comments received, the Commission is abandoning the proposed treatment of the CCF. The NPR indicated that of the three accounts comprising the CCF (capital account, capital gains account, and ordinary income account) the capital account is the only account containing carrier contributions to the CCF. The NPR likewise indicated that the capital gains and ordinary income accounts were comprised solely of the carriers' earnings on money contributed to the CCF. Several commenters clarified that the capital gains account consists of capital gains from the sale of CCF vessels as well as earnings from that account, and the ordinary income account consists of CCF vessel income plus earnings from that account. Only the capital gains and ordinary income accounts are tax deferred. Given the commenters' clarifications that the capital gains and ordinary income accounts are comprised of carrier contributions along with earnings, it appears that to require carriers to reduce the cost of the vessel by the amount of funds withdrawn from these two components of the CCF would indeed penalize CCF carriers and serve as a disincentive to carrier participation in the CCF. Such disincentive would appear to be contrary to the Congressional intent in establishing the CCF program.

Deferred Taxes

Hawaii supports the changes to the treatment of deferred taxes in the proposed rule. The State points out that

[18] The Capital Construction Fund is comprised of three components: the capital account, the capital gains account, and the ordinary income account.

the Commission appropriately decided in Docket No. 78–46 to require carriers to calculate their income tax expense at the applicable statutory rate. Before issuing the final rule in Docket No. 78–46, the Commission had ordered deferred income taxes deducted from rate base in two rate investigations.[19] However, in Docket No. 78–46, the Commission reversed its prior rulings and decided not to require carriers to deduct accumulated deferred income taxes from rate base. Hawaii also notes that the proposed treatment of deferred taxes conforms with the policy of a majority of state regulatory commissions, as well as the Federal Communications Commission and the Federal Energy Regulatory Commission.

In its initial comments, Matson asserts that the deferred taxes account arises only due to the different treatment of depreciation for tax purposes than for expense purposes. According to Matson, when an asset is allowed to depreciate faster for tax accounting purposes than for book accounting purposes, a timing difference occurs and is reflected in deferred taxes. The differences in taxes booked versus taxes paid is recorded as a ''book'' liability. Matson claims that this is not a real liability but only the recognition that more taxes have been expensed than have yet to be paid. If the generally accepted accounting principles (''GAAP'') allowed for recording as an expense only the amount of taxes paid, no book liability for deferred taxes would occur. Matson argues that the value of deferred taxes is only in the time value of money, and this value reverses over a relatively few years. Matson claims that the benefit that the Commission refers to in the proposed rule does not exist. It is merely a philosophical difference between GAAP and the Internal Revenue Service code.

In its reply comments, Matson addresses Hawaii's statement that the majority of regulatory agencies surveyed by the National Association of Regulatory Utility Commissioners treat deferred taxes similarly to the Commission's proposed treatment. Matson argues that such treatment of deferred taxes by state regulatory agencies resulted from the requirements of the Tax Reform Act of 1969 that required utilities to deduct deferred taxes from the rate base, if the utilities planned to use accelerated depreciation.

PRMSA argues that the proposed rule would negate the stimulating effect on investment that was intended by public policy. It further argues that prohibiting returns on shipping assets financed by funds generated through the tax treatment of accelerated depreciation creates a disincentive to investment in the regulated shipping trades. PRMSA suggests that it is clear that a firm's decision to invest funds provided by deferred taxes is a decision that puts its investor-provided equity at risk. Therefore, PRMSA contends that the FMC should focus on providing a rate of return on deferred taxes more akin to that provided by equity. Nevertheless, PRMSA suggests that the return could be adjusted downward to recognize the fact that the initial funds are not investor provided, although once the firm uses those funds its own equity is at risk and some reward is required.

DOT avers that the proposed treatment of deferred taxes is unfair to CCF companies. DOT states that a consequence of participation in the CCF program is that companies tend to have large deferred tax liabilities. Therefore, the Commission's proposal would penalize CCF vessels, which are all U.S. flag, by reducing the rate base by the amount of the tax benefit, which would directly devalue the CCF incentive conferred by Congress. DOT takes issue with the statement in the NPR that accumulated deferred taxes should be eliminated from the rate base, because ''unlike debt, preferred stock, and common-stock equity, deferred taxes cost the carrier nothing.'' (NPR at 52). In its discussion of the CCF, DOT argues that deferred taxes are not cost free to the carrier, because over the life of a vessel, CCF companies will tend to pay higher taxes in later years than those carriers not participating in the CCF program.

The Commission views the issue of deducting deferred taxes arising from accelerated depreciation from the rate base as being similar to that of deducting CCF withdrawals from the cost of a vessel or equipment. The Commission believes that carriers should not be penalized for using accelerated depreciation by deducting accumulated deferred taxes from the rate base and that such a deduction would likely serve to reduce the incentive of carriers to invest in the industry. Congress clearly intended companies to benefit from the use of accelerated depreciation and the Commission does not believe it should take any action which would minimize that benefit. Therefore, the Commission will not require carriers to deduct accumulated deferred taxes arising from accelerated depreciation from the rate base as was proposed. This is in conformance with current Commission policy determined in Docket 78–46, Financial Reports of Common Carriers by Water in the Domestic Offshore Trades.

Working Capital

In the NPR, the Commission proposed to amend its regulations governing the computation of working capital to remove the extraordinary treatment of insurance expense. Only Hawaii commented on the proposed change. In addition to supporting the proposed change, Hawaii proposed two additional changes. First, Hawaii suggested that, in determining the amount of working capital to be included in rate base, the Commission adopt what it termed a ''modified lead-lag approach''. Hawaii's second proposal is to exclude interest expense from the calculation of working capital.

In Docket No. 78–46, and Docket No. 91–51, Financial Reports of Common Carriers by Water in the Domestic Offshore Trades, Hawaii recommended the use of a ''lead-lag study'' in calculating the amount of working capital to be included in rate base. Taking into account the complexities inherent in adopting such an approach, the Commission declined to abandon average voyage expense as the basis for calculating working capital.[20]

Hawaii stated that ''the modified lead-lag approach compares the lag in paying for major operating expenses (excluding depreciation and amortization, and interest expense) with the lag in receiving the revenues to pay for these expenses.'' (Hawaii at 19) Although Hawaii downplays the complexity of this method, its very description of the process belies this conclusion. The Commission can envision carriers spending inordinate amounts of time analyzing various accounts to develop the working capital component of rate base. On the other hand, the Commission believes that the average voyage expense calculation is straightforward and uniquely suited for the maritime industry.

Hawaii also proposed removing interest expense from the calculation of working capital. In its initial comments, Hawaii stated:

Interest expenses should also be excluded from the working capital computation because they represent a *source* of working

[19] See FMC Docket No. 75–57, *Matson Navigation Co.—Proposed Rate Increase in the United States Pacific Coast/Hawaii Domestic Offshore Trade* and FMC Docket No. 76–43, *Matson Navigation Company—Proposed Rate Increase in the United States Pacific Coast/Hawaii Domestic Offshore Trade.*

[20] In Docket No. 78–46, the Commission wrote, ''There is no persuasive evidence in this proceeding or otherwise available which would indicate that average voyage expense incurred by a carrier utilizing self-propelled vessels is not a fair measure of that carrier's working capital requirements.''

capital funds. Interest is not paid to bondholders until after the related revenue is received by the carrier. Thus, interest expense does not create a need for working capital.

(Hawaii at 20).

Crowley and Seaman comment on this proposal. Crowley opposes Hawaii's suggested treatment of interest. Crowley argues that interest expense is a cost of doing business not unlike any other liability for which working capital is required, such as employee costs, equipment acquisition and maintenance and repair, and similarly accrues on the carrier's books. Seaman merely endorses Hawaii's position.

The Commission agrees with Crowley that interest expense is no different from a carrier's other liabilities for which working capital is required. The Commission believes that the working capital component of the rate base is intended to provide for a return on the cash required for the carrier's day-to-day operations and that interest expense meets this criteria. Therefore, the final rule eliminates only the extraordinary treatment of insurance expense from the calculation of the working capital component of rate base.

The Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The Commission grants a waiver of the detailed reporting requirements to carriers which earn gross revenues of $25 million or less in a particular trade in accordance with 46 CFR 552.2(e).

The collection of information requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0008. Under the proposed rule the incremental public reporting burden for this collection of information was estimated to range from an average of 41 hours to 65 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual filing of a proxy group was estimated to require 41 man-hours while Schedule F was estimated to require 24 man-hours to complete. Since the final rule no longer requires that a proxy group of companies be filed annually, carriers which do not file a general rate increase as described in 46 CFR 552.2(f) will incur no additional regulatory burden. To be conservative, the estimated regulatory burden for carriers which file a general rate increase is still estimated to be 65 man-hours. However, the cost of equity estimation has been simplified by eliminating the requirement that a capital asset pricing model be used in deriving the final estimate of the cost of equity. Thus, an extra cushion of time within the 65 man-hours has been created for carriers which file a general rate increase. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Bruce Dombrowski, Deputy Managing Director, Federal Maritime Commission, Washington, DC 20573 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Part 552

Maritime carriers, Reporting and recordkeeping requirements, Uniform system of accounts.

Therefore, pursuant to 5 U.S.C. 553, sections 18 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817 and 841a, and sections 2 and 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844 and 845, part 552 of Title 46, Code of Federal Regulations, is to be amended as follows:

PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

1. The authority citation for part 552 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

2. In § 552.1, paragraph (b) is revised to read as follows and paragraph (d) is removed:

§ 552.1 Purpose.

* * * * *

(b) In evaluating the reasonableness of a VOCC's overall level of rates, the Commission will use return on rate base as its primary standard. A carrier's allowable rate of return on rate base will be set equal to its before-tax weighted average cost of capital. However, the Commission may also employ the other financial methodologies set forth in § 552.6(f) in order to achieve a fair and reasonable result.

* * * * *

3. In § 552.2, paragraph (a) is amended by revising the filing address contained therein, paragraph (b) is revised, paragraph (f)(1)(iv) is amended by removing ''and,'' from the end thereof, paragraph (f)(1)(v) is amended by changing the period at the end thereof to a semicolon and adding ''and,'' to the end of the paragraph, and a new paragraph (f)(1)(vi) is added reading as follows:

§ 552.2 General requirements.

(a) * * *

Federal Maritime Commission, Bureau of Economics and Agreement Analysis, 800 North Capitol Street, NW, Washington, DC 20573–0001

(b) Annual statements under this part shall consist of Exhibits A, B, and C, as described in § 552.6, and shall be filed within 150 days after the close of the carrier's fiscal year and be accompanied by a company-wide balance sheet and income statement having a time period coinciding with that of the annual statements. A specific format is not prescribed for the company-wide statements.

* * * * *

(f) * * *

(1) * * *

(vi) Projected schedules for capitalization amounts and ratios (Schedule F–I); cost of long-term debt capital calculation (Schedules F–II and F–III); cost of preferred (and preference) stock capital calculation (Schedules F–IV and F–V); corporate income tax rate (Schedule F–VI); and flotation costs (Schedule F–VII) for the 12-month period used to compute projected midyear rate base in paragraph (f)(1)(ii) of this section.

* * * * *

4. In § 552.5, paragraphs (b) and (c) are revised, and paragraphs (v), (w), (x), (y), (z), (aa), and (bb) are added to read as follows:

§ 552.5 Definitions.

* * * * *

(b) *The service* means those voyages and/or terminal facilities in which cargo subject to the Commission's regulation under 46 CFR 514.1(c)(2) is either carried or handled.

(c) *The trade* means that part of the Service subject to the Commission's regulation under 46 CFR 514.1(c)(2), more extensively defined below under Domestic Offshore Trade.

* * * * *

(v) *Book value* means the value at which an asset is carried on a balance sheet.

(w) *Capital structure* means a company's financial framework, which is composed of long-term debt, preferred (and preference) stock, and common-stock equity capital (par value plus earned and capital surplus).

(x) *Capitalization ratio* means the percentage of a company's capital structure that is long-term debt, preferred (and preference) stock, and common stock-equity capital.

(y) *Consolidated system* means a parent company and all of its subsidiaries.

(z) *Subsidiary company* means a company of which more than 50 percent of the voting shares of stock are owned by another corporation, called the parent company.

(aa) *Long-term debt* means a liability due in a year or more.

(bb) *Times-interest-earned ratio* means the measure of the extent to which operating income can decline before a firm is unable to meet its annual interest costs. It is computed by dividing a firm's earnings before interest and taxes by the firm's annual interest expense.

5. In § 552.6, paragraph (a)(1), the first sentence of paragraph (a)(2), (b)(5), and the heading of paragraph (b)(9) are revised; paragraphs (c)(5) and (c)(10) are revised; paragraphs (d)(1) and (d)(2) are revised; paragraphs (e) and (f) are redesignated (g) and (h); a new paragraph (e) is added and paragraphs (d)(3) and (d)(4) are redesignated (f)(1) and (f)(2) and the paragraph headings thereof revised reading as follows:

§ 552.6 Forms

(a) *General.* (1) The submission required by this part shall be submitted in the prescribed format and shall include General Information regarding the carrier, as well as the following schedules as applicable:

Exhibit A—Rate Base and supporting schedules;
Exhibit B—Income Account and supporting schedules;
Exhibit C—Rate of Return and supporting schedules;
Exhibit D—Application for Waiver;
Exhibit E—Initial Tariff Filing Supporting Data; and
Exhibit F—Allowable Rate of Return schedules.

(2) Statements containing the required exhibits and schedules are described in paragraphs (b), (c), (d), (e), (g), and (h) of this section and are available upon request from the Commission. * * *

(b) * * *

(5) *Working Capital (Schedule A–V).* Working capital for vessel operators shall be determined as average voyage expense. Average voyage expense shall be calculated on the basis of the actual expenses of operating and maintaining the vessel(s) employed in the Service (excluding lay-up expenses) for a period represented by the average length of time of all voyages (excluding lay-up periods) during the period in which any cargo was carried in the Trade. Expenses for operating and maintaining vessels employed in the Trade shall include: Vessel Operating Expense, Vessel Port Call Expense, Cargo Handling Expense, Administrative and General Expense, and Interest Expense allocated to the Trade as provided in paragraphs (c) (2), (4) and (5) of this section.

* * * * *

(9) *Capitalization of leases (Schedules A–VII and A–VII(A)).* * * *

(c) * * *

* * * * *

(5) *Interest expense and debt payments (Schedules B–IV and B–IV(A)).* This schedule shall set forth the total interest and debt payments, apportioned between principal and interest, short and long-term, on debt and lease obligations. Payments on long-term debt are to be calculated consistent with the method set forth in § 552.6(e)(7) for computing the cost of long-term debt capital. Principal and interest shall be allocated to the Trade in the ratio that Trade rate base less working capital bears to company-wide assets less current assets. Where related company assets are employed by the filing company, the balance sheet figures on the related company's books for such assets shall be added to the company-wide total in computing the ratio. In those instances where interest expenses are capitalized in accordance with paragraph (b)(9) of this section, a deduction shall be made for the amount so capitalized.

* * * * *

(10) *Provision for income tax.* Federal, State, and other income taxes shall be listed separately. If the company is organized outside the United States, it shall indicate the entity to which it pays income taxes and the rate of tax applicable to its taxable income for the subject year. Federal, State and other income taxes shall be calculated at the statutory rate. Such tax rates are to be identical to those set forth in Schedules F–VI or F–VI(A) used in determining the carrier's allowable rate of return.

* * * * *

(d) *Rate of Return (Exhibits C and C(A))*—(1) *General.* All carriers are required to calculate rate of return on rate base. However, the Commission or individual carriers, at the Commission's discretion, may also employ fixed charges coverage and/or operating ratios as provided for in paragraph (f) of this section.

(2) *Return on rate base.* The return on rate base will be computed by dividing Trade net income plus interest expense plus provision for income taxes by Trade rate base.

(e) *Allowable rate of return on rate base (Exhibits F and F(A))*—(1) *General.* A carrier's allowable rate of return on rate base shall be set equal to the carrier's weighted average cost of capital calculated on a before-tax basis (''BTWACC''). The BTWACC is defined mathematically by the following expression:

$$\mathrm{BTWACC} = \left(\frac{D}{D+P+E}\right)K_d + \left(\frac{P}{D+P+E}\right)K_p\left(\frac{1}{1-T}\right) + \left(\frac{E}{D+P+E}\right)K_e\left(\frac{1}{1-T}\right)$$

where:

K_d is the carrier's cost of long-term debt capital;
K_p is the carrier's cost of preferred (and preference) stock capital;
K_e is the carrier's cost of common-stock equity capital;
D is the average book value of the carrier's long-term debt capital outstanding;
P is the average book value of the carrier's preferred (and preference) stock capital outstanding;
E is the average book value of the carrier's common-stock equity capital (par value plus earned and capital surplus) outstanding; and
T is the carrier's composite statutory corporate income tax rate.

A carrier's BTWACC shall be calculated in precise accordance with the rules set forth in this section.

(2) *Subsidiary carrier's capital structure.* Where a carrier is a subsidiary that obtains its common-stock equity capital through a parent company, the capital structure of the subsidiary shall be used in computing the BTWACC unless the carrier has received prior approval by the Commission to use the consolidated capital structure. The subsidiary carrier's cost of common-stock equity capital, the subsidiary carrier's cost of long-term debt capital, the subsidiary carrier's cost of preferred stock capital, and the subsidiary carrier's composite statutory corporate

income tax rate shall also be used in computing the BTWACC. The subsidiary carrier's cost of common-stock equity capital shall be inferred as the cost of common-stock equity capital estimated for a sample of firms having business and financial risk comparable to the subsidiary carrier when the subsidiary carrier's capital structure is used in calculating the BTWACC.

(3) *Comparable risk companies.* (i) A proxy group of companies shall be selected to impute the carrier's cost of common-stock equity capital where:

(A) The carrier is an independent company (i.e., it has no corporate parent) which issues no publicly-traded common-stock equity, or

(B) The carrier is a subsidiary that obtains its common-stock equity capital through a parent company.

(ii) The selection of the proxy group of companies shall be based on the following criteria:

(A) The proxy companies shall be based in the United States.

(B) The proxy companies shall be listed in The Value Line Investment Survey or equivalent data source. If a party uses data from sources other than The Value Line Investment Survey, the burden is on that party to prove that the data source is reliable and the data are sufficiently detailed to calculate the BTWACC.

(C) A majority of the proxy companies shall operate and derive a major portion of their gross revenues primarily as common carriers in the business of freight transportation, and shall own or operate transportation vehicles or vessels. Companies with gross annual revenues equal to or less than $25,000,000 shall be excluded from the proxy group. Proxy group companies whose businesses are not in the transportation industry must clearly be demonstrated to have business risk equivalent to the regulated carrier's business risk.

(D) In addition, comparable risk companies shall be selected by examining some, but not necessarily all, of the following risk indicators:

(1) A company's total capitalization ratio and/or debt-to-equity ratio;

(2) The investment quality ratings of a company's long-term debt instruments;

(3) The investment safety ranking of a company's common-stock equity;

(4) The rating of a company's financial strength;

(5) Other such valid indicators deemed appropriate by the Commission.

(4) *Consolidated capital structure.* (i) Upon application, after notice and opportunity for comment, the Commission may authorize use of the capital structure of the consolidated system (i.e., the parent company and all of its subsidiaries) in computing the BTWACC. The application must show that:

(A) The subsidiary carrier's parent company issues publicly traded common-stock equity;

(B) The subsidiary carrier's parent company owns 90 percent or more of the subsidiary's voting shares of stock; and

(C) The business and the financial risks of the subsidiary carrier and the parent company are similar.

(ii) The similarity of the parent company's and subsidiary carrier's business risk shall be evaluated by examining the degree to which the consolidated system's profits, revenues, and expenses are composed of those of the subsidiary carrier, and the extent to which the parent's holdings are diversified into lines of business unrelated to those of the subsidiary carrier, and/or other indicators of business risk deemed appropriate by the Commission. The similarity of the parent company's and subsidiary carrier's financial risk shall be evaluated by examining the consolidated system's and the subsidiary's total capitalization ratios, debt-to-equity ratios, investment quality rankings on short- and long-term debt instruments, times-interest-earned ratios, fixed charges coverage ratios (calculated to include both FMC and non-FMC regulated operations), and/or other measures of financial risk deemed appropriate by the Commission.

(iii) When the consolidated capital structure is used, the consolidated system's cost of common-stock equity capital (issued by the parent company), the consolidated system's cost of long-term debt capital, the consolidated system's cost of preferred (and preference) stock capital, and the consolidated system's composite statutory corporate income tax rate shall also be used in estimating the subsidiary's BTWACC.

(iv) Where the Commission has approved the use of a consolidated capital structure, such use will not be subject to challenge in a subsequent rate investigation brought under section (3) of the Intercoastal Shipping Act, 1933.

(5) *Book-value, average capitalization ratios.* Capitalization ratios representing the capital structure used in deriving a carrier's BTWACC shall be computed on the basis of average projected book value outstanding over the 12-month period used to calculate projected midyear rate base in § 552.2(b)(1)(ii). The average amount of any class of capital outstanding used in determining the capitalization ratios is computed by adding the amount of a particular type of capital expected to be outstanding as of the beginning of the 12-month period to the amount of that same type of capital expected to be outstanding as of the end of the 12-month period, and dividing the sum by two.

(6) *Capitalization amounts and ratios (Schedules F–I and F–I(A)).* A carrier shall show its long-term debt, preferred stock, and common-stock equity capitalization amounts outstanding, stated in book value terms, as of the beginning and as of the end of the 12-month period used to calculate projected midyear rate base, and the average amounts and average ratios for that 12-month period. Where a carrier is a subsidiary of a parent company, the carrier shall show its own capitalization amounts and ratios unless the carrier has applied for and has been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the carrier shall show instead the consolidated system's capitalization amounts and ratios.

(7) *Cost of long-term debt capital (Schedules F–II, F–II(A), F–III, and F–III(A)).* (i) The cost of long-term debt capital [1] shall be calculated by the carrier for the 12-month period used to compute projected mid-year rate base on the basis of:

(A) Embedded cost for existing long-term debt; and

(B) Current cost for any new long-term debt expected to be issued on or before the final day of the 12-month period.

(ii) The arithmetic average annual percentage rate cost of long-term debt capital calculated on the basis of all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be the cost of long-term debt capital used in computing the BTWACC.

(iii) The annual percentage rate cost of long-term debt capital for all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be calculated separately for the two dates by:

(A) Multiplying the cost of money for each issue under paragraph (e)(7)(v)(A)(*10*) of this section by the principal amount outstanding for each issue, which yields the annual dollar cost for each issue; and

[1] The cost of sinking fund preferred stock shall be computed in accordance with the regulations for calculating the cost of long-term debt.

(B) Adding the annual dollar cost of each issue to obtain the total dollar cost for all issues, which is divided by the total principal amount outstanding for all issues to obtain the annual percentage rate cost of long-term debt capital for all issues.

(iv) The arithmetic average annual percentage rate cost of long-term debt capital for all issues to be used as the cost of long-term debt capital in computing the BTWACC shall be calculated by:

(A) Adding the total annual dollar cost for all issues of long-term debt capital expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total annual dollar cost for all issues of long-term debt capital expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total annual dollar cost of long-term debt for all issues for the 12-month period;

(B) Adding the total principal amount outstanding for all long-term debt issues expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total principal amount outstanding for all long-term debt issues expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total principal amount expected to be outstanding for all issues for the 12-month period; and

(C) Dividing the average total annual dollar cost of long term debt for all issues for the 12-month period by the average total principal amount expected to be outstanding for all issues for the 12-month period, which yields the average annual percentage rate cost of long-term debt capital for all issues to be used in computing the BTWACC.

(v)(A) *Cost of long-term debt capital calculation (Schedules F–II, F–II(A), F–III and F–III(A)).* The carrier shall calculate the annual percentage rate cost of long-term debt capital for all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base separately for the two dates, and shall also calculate the average annual percentage rate cost of long-term debt for all issues for the 12-month period. The carrier shall support these calculations by showing in tabular form the following for each class and series of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period separately for the two dates:

(*1*) Title;

(*2*) Date of issuance;

(*3*) Date of maturity;

(*4*) Coupon rate (%);

(*5*) Principal amount issued ($);

(*6*) Discount or premium ($);

(*7*) Issuance expense ($);

(*8*) Net proceeds to the carrier ($);

(*9*) Net proceeds ratio (%), which is the net proceeds to the carrier divided by the principal amount issued;

(*10*) Cost of money (%), which, for existing long-term debt issues, shall be the yield-to-maturity at issuance based on the coupon rate, term of issue, and net proceeds ratio determined by reference to any generally accepted table of bond yields; and, for long-term debt issues to be newly issued on or before the final day of the 12-month period, shall be based on the average current yield (published in such a publication as Moody's Bond Survey) on long-term debt instruments similar in maturity and investment quality as the long-term debt security that is to be issued;

(*11*) Principal amount outstanding (%);

(*12*) Annual cost ($); and

(*13*) Name and relationship of issuer to carrier.

(B) Where a carrier is a subsidiary of a parent company, the carrier shall show the cost of long-term debt calculations and information required in this paragraph for its own cost of long-term debt unless the carrier has applied for and received prior permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the subsidiary carrier shall show the required cost of long-term debt calculations and information for the consolidated system's long-term debt.

(vi) In the event that new long-term debt is to be issued on or before the final day of the 12-month period used to compute projected mid-year rate base, the carrier shall submit a statement explaining the methods used to estimate information required under paragraph (e)(7)(v)(A) (*1*) through (*13*) of this section.

(8) *Cost of preferred (and preference) stock capital (Schedules F–IV, F–IV(A), F–V, and F–V(A)).* (i) The cost of preferred (and preference) stock capital shall be calculated by the carrier for the 12-month period used to compute projected mid-year rate base on the basis of:

(A) Embedded cost for existing preferred (and preference stock); and

(B) Current cost for any new preferred (and preference) stock to be issued on or before the final day of the 12-month period.

(ii) The arithmetic average annual percentage rate cost of preferred (and preference) stock capital calculated on the basis of all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to calculate projected mid-year rate base shall be the cost of preferred (and preference) stock capital used in computing the BTWACC.

(iii) The annual percentage rate cost of preferred (and preference) stock capital for all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be calculated separately for the two dates by:

(A) Multiplying the cost of money for each issue under paragraph (e)(8)(v)(A)(*9*) of this section by the par or stated amount outstanding for each issue, which yields the annual dollar cost for each issue; and

(B) Adding the annual dollar cost of each issue to obtain the total for all issues, which is divided by the total par or stated amount outstanding for all issues to obtain the annual percentage rate cost of preferred (and preference) stock capital for all issues.

(iv) The arithmetic average annual percentage rate cost of preferred (and preference) stock capital for all issues to be used as the cost of preferred (and preference) stock capital in computing the BTWACC shall be calculated by:

(A) Adding the total annual dollar cost for all issues of preferred (and preference) stock capital expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total annual dollar cost for all issues of preferred (and preference) stock capital expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total annual dollar cost of preferred (and preference) stock for all issues for the 12-month period;

(B) Adding the total par or stated amount outstanding for all preferred (and preference) stock issues expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total par or stated amount outstanding for all issues expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total par or stated amount expected to be outstanding for all issues for the 12-month period;

(C) Dividing the average total annual dollar cost of preferred (and preference) stock for all issues for the 12-month period by the average total par or stated

amount expected to be outstanding for all issues for the 12-month period, which yields the average annual percentage rate cost of preferred (and preference) stock capital for all issues to be used in computing the BTWACC.

(v)(A) *Cost of preferred (and preference) stock capital calculation (Schedules F–IV, F–IV(A), F–V and F–V(A)).* The carrier shall calculate the annual percentage rate cost of preferred (and preference) stock capital for all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base separately for the two dates, and shall also calculate the average annual percentage rate cost of preferred (and preference) stock for all issues for the 12-month period. The carrier shall support these calculations by showing in tabular form the following for each issue of preferred (and preference) stock as of the beginning and as of the end of the 12-month period separately for the two dates:

(*1*) Title;

(*2*) Date of issuance;

(*3*) Dividend rate (%);

(*4*) Par or stated amount of issue ($);

(*5*) Discount or premium ($);

(*6*) Issuance expense ($);

(*7*) Net proceeds to the carrier ($);

(*8*) Net proceeds ratio (%), which is the net proceeds to the carrier divided by the par or stated amount issued;

(*9*) Cost of money (%), which, for existing preferred (and preference) stock issues, shall be the dividend rate divided by the net proceeds ratio; and, for preferred (and preference) stock issues to be newly issued on or before the final day of the 12-month period, shall be the estimated dividend rate divided by the estimated net proceeds ratio;

(*10*) Par or stated amount outstanding ($);

(*11*) Annual cost ($); and

(*12*) If issue is owned by an affiliate, name and relationship of owner.

(B) Where a carrier is a subsidiary of a parent company, the carrier shall show the cost of preferred (and preference) stock calculations and information required in this paragraph for its own preferred (and preference) stock unless the carrier has applied for and been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the subsidiary carrier shall show the required cost of preferred (and preference) stock calculations and information for the consolidated system's preferred (and preference) stock.

(vi) In the event that new preferred (and preference) stock is to be issued on or before the final day of the 12-month period used to compute projected mid-year rate base, the carrier shall submit a statement explaining the methods used to estimate information required under paragraph (e)(8)(v)(A) (*1*) through (*12*) of this section.

(9) *Cost of common-stock equity capital.* A carrier's cost of common-stock equity capital shall be calculated using the Discounted Cash Flow (''DCF'') and the Risk Premium (''RP'') methods. A final estimate of that cost shall be derived from the separate estimates obtained using each of the methods.

(10) *DCF method.* (i) The DCF model that shall be used in calculating a carrier's cost of common-stock equity is defined algebraically as follows:

$$K_e = \frac{D_o}{P_o}(1+.5g) + g$$

where:

K_e is the carrier's cost of common-stock equity capital;

D_o is the carrier's current annualized dividend (defined as four times the current quarterly installment) per share;

P_o is the current market price per share of the carrier's common stock; and

g is the constant expected annual rate of growth in the carrier's dividends per share.

(ii) *Current market price per share of common stock.* A DCF analysis in which the current market price per share of the carrier's common stock is an average of the monthly high and low market prices during a six-month period commencing not more than nine months prior to the date on which the proposed rates are filed is required. Supplemental DCF analysis using the most recent stock price as a basis for the current market price per share of common stock may also be used.

(iii) *Additional Studies.* Other analysis or forms of the DCF model may be included in the computation and determination of the DCF estimate of the cost of common-stock equity.

(11) *RP method.* (i) The RP model that shall be used in calculating a carrier's cost of common-stock equity is defined mathematically as follows:

$$K_e = K_d + RP$$

where:

K_e is the regulated carrier's cost of common-stock equity capital;

K_d is the incremental cost of debt; and

RP is the risk premium.

(ii) *Risk Premium.* The risk premium used in the RP model shall be the historical arithmetic average return differential between rates of return actually earned on investments in the Standard and Poor's 500 Stock Index and the five-year Treasury note. A risk adjustment specific to the carrier for firm size may be included in the computation and determination of the risk premium. The risk premium shall be based on the complete historical data series published annually in the Stocks, Bonds, Bills and Inflation Yearbook, for the period 1926 through the most recent date for which the specified data are available.

(iii) *Incremental cost of debt.* A six-month average of five-year Treasury Note yields computed over a period commencing not more than nine months prior to the date on which the proposed rates are filed shall be the estimate of the incremental cost of debt in the RP model. Supplemental RP analysis using the most recent five-year Treasury Note yield as a basis for the incremental cost of debt may also be used.

(12) *Corporate income tax rate (Schedules F–VI and F–VI(A)).* The corporate income tax rate used in computing the BTWACC shall be the carrier's composite statutory corporate income tax rate for the 12-month period used to compute projected midyear rate base. Such rate shall be a composite of the carrier's Federal and State income tax rates, and of any other income tax rate to be applied to the carrier's income by any other entity to which the carrier is to pay income taxes. The carrier shall calculate and show its composite statutory corporate income tax rate as well as its Federal, State, and any other applicable statutory income tax rates separately for the 12-month period used to compute projected midyear rate base. The carrier shall also state the name of any entity other than the Federal and State governments to which it is to pay taxes. Where a carrier is a subsidiary of a parent company, the carrier shall show its own statutory corporate income tax rates unless the carrier has applied for and been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the carrier shall show instead the consolidated system's statutory corporate income tax rates.

(13) *Flotation costs (Schedules F–VII and F–VII(A)).* (i) A carrier's cost of common-stock equity capital shall be adjusted to reflect those costs of floating new issues that are actually incurred, but only in the event that new common stock is to be issued to the general

public during the 12-month period used to compute projected midyear rate base. Those flotation costs for which an allowance shall be made must be identifiable, and must be directly attributable to underwriting fees, and printing, legal, accounting, and/or other administrative expenses. No allowance shall be made for any hypothetical costs such as those associated with market pressure and market break effects. The allowance shall be applied solely to the new common-stock equity and shall not be applied to the existing common-stock equity balance. The formula that shall be used to compute such an allowance is as follows:

$k = Fs/(1+s)$

where:

k is the required increment to the cost of the carrier's common stock equity capital that will allow the company to recover its flotation costs;

F is the flotation costs expressed as a decimal fraction of the dollar value of new common-stock equity sales; and

s is the new common-stock equity sales expressed as a decimal fraction of the dollar value of existing common-stock equity capital.

(ii) *Flotation costs data (Schedules F–VII and F–VII(A)).* (A) In the event that new common-stock equity is to be issued during the 12-month period used to compute projected midyear rate base, the carrier shall show separately by category the estimated costs of floating the new issues to the extent that such costs are identifiable and are directly attributable to actual underwriting fees, and to printing, legal, accounting, and/or other administrative expenses that must be paid by the carrier. The carrier shall submit a statement explaining the method used in estimating the flotation costs. The carrier shall also show estimates of the date of issuance; number of shares to be issued; gross proceeds at issuance price; and net proceeds to the carrier.

(B) Where a carrier is a subsidiary that obtains its common-stock equity capital through a parent company, and the parent company intends to issue new common-stock equity during the 12-month period, the carrier shall show separately by category the estimated costs to the parent company of floating the new issues, and estimates of the above items relative to the parent company's issuance of new common-stock equity, provided that such carrier has applied for and been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC.

(f) *Financial ratio methods*—(1) *Fixed charges coverage ratio.* * * *

(2) *Operating ratio.* * * *

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–21845 Filed 9–1–95; 8:45 am]

BILLING CODE 6730–01–W

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–66; RM–8625]

Radio Broadcasting Services; Dayton, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Steven C. Hoffman, allots Channel 272A at Dayton, Washington, as the community's second local FM transmission service. *See* 60 FR 26712, May 18, 1995. Channel 272A can be allotted at Dayton in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.0 kilometers (1.9 miles) southwest to avoid short-spacings to the construction permit site for Station KRAO(FM), Channel 273C3, Colfax, Washington, and the licensed site for Station KORD(FM), Channel 274C, Richland, Washington. The coordinates for Channel 272A at Dayton are North Latitude 46–17–57 and West Longitude 117–59–52. Since Dayton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been received.

DATES: Effective October 16, 1995. The window period for filing applications will open on October 16, 1995 and close on November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–66, adopted August 24, 1995, and released August 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 272A at Dayton.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–21908 Filed 9–1–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–48; RM–8590]

Television Broadcasting Services; Weaverville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 32 to Weaverville, California, as that community's first local television broadcast service, in response to a petition for rule making filed by Mark C. Allen. *See* 60 FR 20950, April 28, 1995. Coordinates used for Channel 32 at Weaverville are 40–54–45 and 122–52–15. *See* Supplementary Information, *infra.* With this action the proceeding is terminated.

EFFECTIVE DATE: October 16, 1995.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–48, adopted August 23, 1995, and released August 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Weaverville is located within the prohibited co-channel minimum distance separation of 280.8 kilometers (174.5 miles) to the Sacramento-Stockton television market, one of the designated television markets affected by the Commission's current freeze on allotments and applications pending the outcome of an inquiry into the use of advanced television systems in broadcasting. (*See Order, Advanced Television Systems and Their Impact on Existing Television Broadcasting Service*, 52 Fed. Reg. 28346, July 29, 1987). However, Channel 32 is allotted to Weaverville in compliance with the terms of the freeze *Order* at a restricted site. Interested parties should note that any application submitted for Channel 32 at Weaverville which does not specify a site beyond the ''freeze zone'' governing the allotment will not be accepted for filing.

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under California, is amended by adding Weaverville, Channel 32.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–21907 Filed 9–1–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–37; Notice 2]

RIN 2127–AF 22

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts amendments to the Federal Motor Vehicle Safety Standard on lighting to replace the currently incorporated SAE J576c with the more recent SAE J576 JUL91 as the referenced standard on plastics materials, to replace ASTM D 1003–61 with the more recent ASTM D 1003–92 in the test procedures, and to allow alternative processing techniques, sample sizes and thickness tolerances to those presently specified. These amendments represent the choice of Option 1 from the notice of proposed rulemaking published in November 1994.

DATES: The effective date of the final rule is March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Rulemaking, NHTSA (202–366–6987).

SUPPLEMENTARY INFORMATION: Heraeus DSET Laboratories, Inc. (''DSET''), of Phoenix, Arizona, petitioned NHTSA for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Specifically, DSET asked that paragraph S5.1.2 be amended ''to update the test specimen processing requirements of plastic material used for optical parts such as lenses and reflectors.'' Currently, these materials are required to conform to Society of Automotive Engineers (SAE) Recommended Practice J576c, May 1970. DSET wants NHTSA

> to allow alternative processing techniques besides injection molding to produce test specimens, to allow test specimen sizes other than a 3 inch diameter disc and to change the specimen thickness tolerances from ±0.005 inch to ±.010 inch.

Those requirements for injection molding and for the diameter and thickness of the test specimen are set forth in J576c, May 1970.

NHTSA granted the petition and published a notice of proposed rulemaking in response to it on November 2, 1994 (59 FR 54881). The notice proposed two alternative amendments of S5.1.2 as a means of implementing its grant of DSET's petition. The agency asked commenters for their views on each of the alternatives.

Option 1. This option would substitute SAE J576 JUL91 for SAE J576c, May 1970, and make conforming amendments in the text of S5.1.2. Option 1 would also replace American Society for Testing and Materials (ASTM) D 1003–61 with ASTM D 1003–92 with respect to measurement of haze (which, as currently specified, would not exceed 7 percent). A specimen thickness tolerance of ±0.25 mm (0.010 in.) would also be allowed as there is no technical reason to limit the test specimen thickness tolerance to ±0.005 in., and the value proposed by NHTSA as recommended by DSET appears to be a more reasonable tolerance for test specimens.

Option 2. This option would retain the current SAE and ASTM specifications but would allow processing techniques other than injection molding to produce equivalent test specimens, test specimens other than a disc of 3-inch diameter, and a test specimen thickness tolerance of ±0.010 inch.

Seven comments were received, five of which supported Option 1. These were from Flxible Corporation (''Flxible''), Transportation Safety Equipment Institute (''TSEI''), Robert Bosch, GmbH (''Bosch''), American Automobile Manufacturers Association (''AAMA''), and Ford Motor Company (''Ford''). Miles, Inc. opposed Option 1 and supported Option 2. The Plastics Division of General Electric Corporation (''GE'') did not express a preference for either alternative.

Each of the commenters supporting Option 1 had a different concern. Flxible suggested that NHTSA adopt the base number of each SAE and ASTM standard/recommended practice, with the suffix notation ''Latest Revision.'' In the company's view, this would eliminate the need to revise older materials and ensure that the safety standards reflect contemporary industry practice.

While this is an attractive notion, there are legal constraints against it. The SAE and ASTM materials per se are only guidelines and advisory in nature. Once they are incorporated into the Federal motor vehicle safety standards, they become ''the law of the land'', and a manufacturer must comply with them or face civil sanctions. Under the Administrative Procedure Act, a regulation imposing a substantive burden cannot be adopted in the absence of adequate public notice and an opportunity to comment. Under the approach suggested by Flxible, automatic updating of the safety standards to incorporate the latest SAE and ASTM revisions would occur with no prior public notice or opportunity to comment, and hence violate the Administrative Procedure Act. Further, NHTSA has found that many updated and revised materials change the previous materials in substantive ways. Some changes may not be in the interests of safety; the elimination of the heat test from SAE J576 JUL91 is one example of this. Other changes may increase, rather than reduce, a substantive burden upon industry. Regulated persons and the public must

be apprised of these changes before they are adopted.

NHTSA may, however, adopt an updated version without prior notice where there appears to be no substantive change since such an adoption is in the nature of a technical amendment. The agency is adopting an updated version in this final rule on the basis of a comment from TSEI. Under proposed paragraph S5.1.2(e), after exposure to the heat test, the samples shall conform to the color requirements of SAE J578a October 1966. TSEI pointed out that current paragraph S5.1.5 references SAE J578c February 1977. It recommended that NHTSA change both references to the specification of J578 MAY88.

NHTSA has compared the 1988 and 1977 versions of J578 with that of 1966. It finds no substantive difference between the 1966 and 1977 versions. The 1988 version, however, contains a third method of color measurement to be used ''as a referee approach when the commonly used methods produce questionable results.'' In addition, the Appendix in the latter has added a section of ''Color Measurements of Gaseous Discharge Lighting Devices.'' NHTSA ought to have comment on these changes before adopting SAE J578 MAY88, and, for this reason, has not followed TSEI's suggestion. On the other hand, because of the lack of substantive change between the other two versions, paragraph S5.1.2(e) is added with an update of the J578 reference to 1977 from the 1966 version which was proposed.

The wording of present paragraph S5.2.1 concerned Ford and AAMA. Under this paragraph, phrases such as ''It is recommended that'' and ''should be,'' which appear in materials incorporated by reference, are to be read as setting forth mandatory requirements. Ford and AAMA commented that these phrases should not be interpreted as applying to SAE J576 JUL91. In NHTSA's view, the result of adopting Ford's and AAMA's comments would be to make compliance of plastic materials used for optical parts a voluntary affair. This would defeat the purpose of the rulemaking.

Proposed paragraph S5.1.2(e) would require test samples, after the heat test, to ''show no discernable change in shape and general appearance when compared with an unexposed specimen.'' This language comes from J576 itself, with the exception that the SAE uses ''significant'' rather than ''discernable.'' Ford and AAMA objected to this substitution, arguing that it would establish a higher standard to be met by plastics, and that there is no need to change language that has been a requirement for years. They recommended use of the word ''significant.'' In their view, a change that is ''discernable'' is not necessarily one that is ''significant.''

In its proposal, NHTSA had no intention of increasing the burden on any regulated party. The agency proposed the word ''discernable'' with care, because it is objective, while ''significant'' is not. Motor vehicle safety standards are required by law to be ''objective'', 49 U.S.C. 30111(a). The agency has concluded that ''discernable'' is more appropriate for a requirement specifically expressed in the text of Standard No. 108 (as compared with one incorporated by reference). However, NHTSA wishes to make clear that it views the words as essentially synonymous in this context. If a post-test change in shape or general appearance is discernable, NHTSA considers that to be significant. Such a change indicates the potential for degradation of a lens in use, with a corresponding effect upon color and photometrics of the lamp on which it is installed. To add even greater objectivity, the final rule expresses the requirement as ''discernable to the naked eye.'' Should a change be discernable to the naked eye after testing, and a manufacturer believe that such a change is not ''significant,'' the manufacturer may file a Part 573 Noncompliance Notification Report simultaneously with an application to NHTSA for a determination that the change resulting from that testing is inconsequential to motor vehicle safety.

GE did not choose between the alternatives in its comment. It did, however, recommend the adoption of SAE J576 JUL91 in its entirety, and that NHTSA not carry over the heat test from the previous version of J576. In its view, the heat tests of SAE J575 are adequate until further work is done on thermal issues suitable for incorporation into J576.

Having considered the comments in response to the NPRM, NHTSA is amending Standard No. 108 to add the two new paragraphs proposed, maintaining the performance requirements required of plastic materials by SAE J576c for the heat test and specifying positioning of test samples during the test. These have been omitted by the SAE from J576 JUL91. NHTSA has chosen to retain the existing heat test as one that is familiar to industry and one which meets the need for motor vehicle safety. It is a minimum requirement, intended to establish a margin of safety between the temperatures at which plastic reflectors and lenses may fail from internal heat, and temperatures on the exterior surface induced by exposure to sunlight. Lamp manufacturers use J575 or similar tests to determine whether the particular design characteristics of their lamps require use of premium materials in the lenses. It is a test of the finished lens as installed on the lamp, rather than a test of the materials used in finished products. Use of material with insufficient high temperature performance can result in reflectors that lose color and reflectivity.

The positioning of test samples will allow the sample to droop if its strength is adversely affected by the test.

In order to retain the current 3-year outdoor exposure time test requirements for plastic lenses used or covered by another material and not exposed directly to sunlight, NHTSA is adding a new paragraph S5.1.2(g) to specify that paragraph 3.3.3.1 of SAE J576 JUL91 does not apply as regards protected materials. For the same reason, NHTSA is not adopting paragraph 3.3.3.2. of SAE J576 JUL91 which allows an accelerated 6-month outdoor exposure test time. New paragraph S5.1.2(g) will not change the stringency or flexibility of the standard as it exists, but will ensure that the integrity of plastic materials is maintained by not permitting a lesser exposure time for materials which may be protected when in use.

Miles, Inc., a manufacturer of polycarbonate resin used as a material in lenses and reflectors, objected to Option 1. In its view, this alternative places an additional testing burden on the resin manufacturer, as compared with the present requirements. For this reason, it supported Option 2. Specifically, Miles opposes SAE J576 JUL91 because of Section 3.1 *Materials to be Tested*. This section reads:

> Outdoor exposure tests shall be made on each material * * * offered for use in optical parts * * *. Concentrations of polymer components and additives such as plasticizer, lubricants, colorants, weathering stabilizers, and antioxidants in plastic materials and/or coatings may be changed without outdoor exposure testing if: the changes are within the limits of composition represented by higher and lower concentrations of these polymer components and additives have been tested in accordance with 3.3 and found to meet the requirements of Section 4.

Miles interprets this language to mean that changes in dye concentrations would only be permissible if samples containing lower and higher concentrations of dye had been exposure tested. Miles believes that this, in effect, would double the samples to

be tested when compared with the present requirements.

The present requirements are those of section 3.1 of SAE J576c, May 1970. These state, in pertinent part, that ''[a] test of one color and formulation shall cover variations in dye concentration, but shall not cover changes in dye materials or changes in polymers.'' Miles interprets this as meaning that a new exposure test need not be conducted under the 1970 version if the only change in the product is a variation in dye concentration. Its present practice is to test for exposure materials incorporating new dyes only at the expected concentration level of the dye. One exposure test covers each new dye, but Miles will accept the test results as valid when there are small variations in dye concentration.

Miles is correct that SAE J576c allows a single test to cover variations in dye concentration. SAE J576 JUL91 may be interpreted as calling for the testing of two samples by specifying that dye concentrations in material to be used in motor vehicle optical parts must fall within the upper and lower limits of dye concentrations tested if there are variations in dye concentration. Miles believes the newer requirement will double its testing burden.

NHTSA does not agree that this is the inevitable result of the adoption of this portion of SAE J576 JUL 91. What paragraph S5.1.2 is intended to ensure is that lenses and reflectors, as manufactured for use on motor vehicles, are fabricated from plastic materials that meet SAE J576. The key issue is whether the equipment satisfies the performance requirements of the standard, not the number of tests conducted on the materials used in the equipment. Ultimately, the manufacturer of the vehicle in certifying compliance with all applicable Federal motor vehicle safety standards, is certifying that the lenses and reflectors on the vehicle are made from plastics materials that meet J576. If the lens or reflector is manufactured as replacement equipment, the certification responsibility is that of the manufacturer of the equipment. Thus, it is incumbent upon the vehicle or equipment manufacturer to assure itself that the materials it obtains from the plastics manufacturer comply with SAE J576 (and, furthermore, not to change the composition of the plastics materials so obtained in a manner that would cause it to be noncomplying). The documentation needed for such assurance, including the quantum of testing performed by the plastics manufacturer and by the vehicle or equipment manufacturer, is a decision that each equipment or vehicle manufacturer must make under the particular circumstances. NHTSA, of course, expects manufacturers to exercise reasonable care in certifying their products, and, in the event of a noncompliance, the manufacturer may claim that it had no reason to know, despite exercising reasonable care, that the vehicle or equipment failed to comply. However, the allocation of that responsibility is a matter of contract between the manufacturer with the Federal certification responsibility and its plastic materials supplier. Plastic materials are not completed items of motor vehicle equipment subject to Standard No. 108 so the Federal certification responsibility does not fall upon Miles. If Miles or other materials manufacturers are satisfied, based on their extensive experience with dyes, that changes in dye concentration would not cause the plastic material to fail the specified performance requirements, they may be able to persuade their purchasers that additional testing is not needed.

Effective Date

The effective date of the final rule is March 1, 1996.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures. This final rule was not reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to update testing procedures. Since the final rule will have no significant cost or other impacts, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act. NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The final rule will not have a significant effect upon the environment. The composition of plastic materials used in optical parts will not change from those presently in production.

Regulatory Flexibility Act. The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action does not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle equipment, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected because the price of new vehicles and vehicle equipment will not be impacted.

Executive Order 12612 (Federalism). This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient Federalism implications to warrant the preparation of a federalism Assessment.

Civil Justice. The final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by revising paragraph S5.1.2, to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5.1.2 Plastic materials used for optical parts such as lenses and reflectors shall conform to SAE Recommended Practice J576 JUL91, except that:

(a) Plastic lenses (other than those incorporating reflex reflectors) used for inner lenses or those covered by another material and not exposed directly to sunlight shall meet the requirements of paragraphs 3.3 and 4.2 of SAE J576 JULY91 when covered by the outer lens or other material;

(b) After the outdoor exposure test, the haze and loss of surface luster of

plastic materials (other than those incorporating reflex reflectors) used for outer lenses shall not be greater than 30 percent haze as measured by ASTM D 1003–92, *Haze and Luminous Transmittance of Transparent Plastic;*

(c) After the outdoor exposure test, plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors shall not show surface deterioration, crazing, dimensional changes, color bleeding, delamination, loss of surface luster, or haze that exceeds 7 percent as measured under ASTM D 1003–92.

(d) The thickness of the test specimens specified in paragraph 3.2.2 of SAE J576 JUL91 may vary by as much as ±0.25 mm.

(e) After exposure to the heat test as specified in subparagraph (f) of this paragraph, and after cooling to room ambient temperature, a test specimen shall show no change in shape and general appearance discernable to the naked eye when compared with an unexposed specimen. The trichromatic coefficients of the samples shall conform to the requirements of SAE J578c, ''Color Specification for Electric Signal Lighting Devices'', February 1977.

(f) Two samples of each thickness of each plastic material are used in the heat test. Each sample is supported at the bottom, with at least 51 mm. of the sample above the support, in the vertical position in such a manner that, on each side, the minimum uninterrupted area of exposed surface is not less than 3225 sq. mm. The samples are placed for two hours in a circulating air oven at 79 ± 3 degrees C.

(g) All outdoor exposure tests shall be 3 years in duration, whether the material is exposed or protected. Accelerated weathering procedures are not permitted.

* * * * *

Issued on August 29, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–21865 Filed 9–1–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 082895A]

Groundfish of the Gulf of Alaska; Pacific Cod with Jig and Pot Gear for Processing by the Inshore Component in the Central Regulatory Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod with jig and pot gear for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to use the total allowable catch (TAC) for Pacific cod in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 1, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the inshore component in the Central Regulatory Area of the GOA was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8470, February 14, 1995) as 41,085 metric tons (mt). The directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA was closed under § 672.20(c)(2)(ii) on March 22, 1995, in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (60 FR 15521, March 24, 1995). NMFS has determined that as of August 8, 1995, 4,313 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1995 TAC for Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. All other closures remain in full force and effect.

This action opens the directed fishery for Pacific cod by vessels catching Pacific cod with jig and pot gear for processing by the inshore component in the Central Regulatory Area of the GOA. Directed fishing for groundfish with hook-and-line and trawl gear is currently prohibited (60 FR 26694, May 18, 1995; 60 FR 37600, July 21, 1995; 60 FR 37601, July 21, 1995).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: August 29, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–21948 Filed 8–30–95; 3:43 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 082995A]

Groundfish of the Gulf of Alaska; Trawling in the Western Regulatory Area

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment closing the season for all groundfish by vessels using trawl gear, except fishing for pollock by vessels using pelagic trawl gear, in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent overfishing of Pacific ocean perch (POP).

DATES: Effective 12 noon, Alaska local time (A.l.t.), September 1, 1995, until 12 midnight, A.l.t., December 31, 1995. Comments must be received no later than 4:30 p.m., A.l.t., September 18, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn. Lori Gravel, or be delivered

to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The Magnuson Act requires that conservation and management measures prevent overfishing. The 1995 overfishing level for POP in the Western Regulatory Area of the GOA is established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 1,482 metric tons (mt). The directed fishery for POP closed in the Western Regulatory Area on July 20, 1995 (60 FR 37601, July 21, 1995). As of July 29, 1995, 1,420 mt of POP have been caught.

Substantial trawl fishing effort will be directed at remaining amounts of groundfish in the GOA during 1995. These fisheries can have significant catches of POP.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.22(a)(1)(i) and (a)(4), that closing the season by prohibiting directed fishing for all groundfish by vessels using trawl gear, except fishing for pollock by vessels using pelagic trawl gear, in the Western Regulatory Area of the GOA is necessary to prevent overfishing of POP and is the least restrictive measure to achieve that purpose. Without this prohibition of directed fishing, significant incidental catch of POP would occur by trawl vessels.

Therefore, NMFS is closing the season for all groundfish by vessels using trawl gear, except fishing for pollock by vessels using pelagic trawl gear, in the Western Regulatory Area of the GOA.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, POP in the Western Regulatory Area of the GOA will be overfished, jeopardizing the long-term capacity of that stock. Under § 672.22(c)(2), interested persons are invited to submit written comments on this action until September 18, 1995 (see **ADDRESSES**).

Classification

This action is taken under § 672.22 and is exempt from review under E.O. 12866.

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

Dated: August 29, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–21863 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 60, No. 171

Tuesday, September 5, 1995

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

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–95–017]

RIN 2115–AE47

Drawbridge Operation Regulation; Sabine River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Kansas City Southern Railway Company, the Coast Guard is proposing a change to the regulation governing the operation of the swing span railroad bridge over the Sabine River, mile 36.2 near Ruliff, Texas, by permitting the draw to remain closed to navigation at all times. The draw presently opens on call with 24 hours advance notice, however, there is no significant navigation on the waterway and there have been no requests to open the bridge for passage of marine traffic for over 44 years with the exception of a single request made in 1995.

DATES: Comments must be received on or before November 6, 1995.

ADDRESSES: Comments should be mailed to Commander(ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396 or may be delivered to Room 1313 at the same address between 8 a.m. and 3:30 p.m., Monday through Friday except Federal holidays. The comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments: Interested parties are invited to participate in the rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give the reason for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. John Wachter at the address under ''**ADDRESSES**.'' The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information. The drafters of this regulation are Mr. John Wachter, Project Officer and Lieutenant Elisa Holland, Project Attorney.

Background and Purpose: Upon request by the bridge owner, the Coast Guard is proposing to permit the draw of the swing span railroad bridge over the Sabine River, mil. 36.2, near Ruliff, TX to remain permanently closed. Navigation requiring openings is nonexistent and the bridge has not been opened for passage of navigation for 44 years.

Discussion of Proposed Rules

There is no commercial navigation on the waterway in the vicinity of the bridge crossing. Vertical clearance of the bridge in the closed position is 4 feet above mean high water and 18 feet above low water. The occasional small recreational boat which uses the waterway can transit the bridge without requiring an opening. The single request in 1995 was made for a boat that was constructed upstream of the bridge over a period of several years. The private individual that constructed the vessel needed to move it to the mouth of the river for sale to a prospective buyer. The bridges were opened to pass this vessel. There are no known similar projects planned. This bridge is on the KCS Main Line from Kansas City, Missouri to Beaumont and Houston, Texas and also forms an integral part of Union Pacific Railroad's transcontinental line from Los Angeles to New Orleans. This line carries over 30 million gross tons of freight each year. There is also a fiber optic cable mounted to the bridge which serves as part of a nationwide communications link. Permitting the permanent closure of the draw would result in a significant savings in maintenance costs and avoidance of an exorbitant cost of removing the cable with no adverse effect on navigational traffic.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040); February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) government jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the need of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

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

Federalism Implications: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment: The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.493 is revised to read as follows:

§ 117.493 Sabine River.

(a) The draw of the Southern Pacific railroad bridge, mile 19.3 near Echo, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Kansas City Southern Railway bridge, mile 36.2 near Ruliff and the draw of the S12 bridge, mile 40.8, at Starks, need not be opened for the passage of vessels.

Dated: August 16, 1995.

R.C. North,

Read Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–21963 Filed 9–1–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–71–1–6960b; FRL–5269–6]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 14, 1994, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the North Carolina State Implementation Plan (SIP). This revision is the adoption of an amendment to an existing air quality rule that was the subject of public hearings held on March 28 and 30, 1994. 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 EPA 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 this proposed 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 October 5, 1995.

ADDRESSES: Written comments on this action should be addressed to Mr. Randy Terry at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 443, 401 M Street SW., Washington, DC 20460.

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

North Carolina Department of Environmental, Health, and Natural Resources, Division of Environmental Management, Raleigh, North Carolina 27626–0535.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides, and Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4212.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 25, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–20597 Filed 9–1–95; 8:45 am]

BILLING CODE 6050–50–P

40 CFR Part 52

[AK–8–1–6733b; FRL–5286–9]

Approval and Promulgation of State Implementation Plans: Alaska

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 Oregon for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. 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 this proposed rule, no further activity is contemplated in relation to this rule. If the 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.

DATES: Comments on this proposed rule must be received in writing by October 5, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below.

Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The Alaska Department of Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: David J. Dellarco, Air and Radiation Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: August 15, 1995.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 95–21876 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OR–31–1–5932b; FRL–5283–5]

Approval and Promulgation of State Implementation Plans: Oregon

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 Oregon for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate, found in Section 507 of the Clean Air Act. 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 this proposed rule, no further activity is contemplated in relation to this rule. If the 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.

DATES: Comments on this proposed rule must be received in writing by October 5, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

Oregon Department of Environmental Quality, Air Quality Division, 811 SW Sixth Avenue, Portland, Oregon, 97204.

FOR FURTHER INFORMATION CONTACT: David Dellarco, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: August 8, 1995.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 95–21885 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[WV31–1–7063b; FRL–5279–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia: Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing the requirements for determining conformity of general federal actions to applicable air quality implementation plans (General Conformity). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision 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 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. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 5, 1995.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597–3164, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (West Virginia General Conformity Rule) which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Carbon monoxide, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 19, 1995.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 95–21882 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[KY–95–01–FRL–5290–4]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Kentucky Natural Resources and Environmental Protection Cabinet

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes source category-limited interim approval of the operating permits program submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 5, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of Kentucky's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location:

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

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 347–3555, Ext. 4149.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the state's submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional material. EPA received Kentucky's title V operating permit program submittal on January 18, 1994. The Commonwealth provided EPA with additional material in supplemental submittals dated November 15, 1994, April 14, 1995, May 3, 1995, and May 22, 1995. Because these supplements materially changed the Commonwealth's title V program submittal, EPA has extended the review period and will work expeditiously to promulgate a final decision on Kentucky's program.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to two years. Where a state requests source category-limited interim approval and demonstrates compelling reasons in support thereof, the EPA may also grant such an interim approval. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed source category-limited interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the Commonwealth of Kentucky would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the Commonwealth of Kentucky. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if the Commonwealth of Kentucky failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the Commonwealth of Kentucky then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the Commonwealth of Kentucky had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the Commonwealth of Kentucky, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the Commonwealth of Kentucky had come into compliance. In any case, if, six months after application of the first sanction, Kentucky still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove Kentucky's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Kentucky had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the Commonwealth of Kentucky, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the Commonwealth of Kentucky had come into compliance. In all cases, if, six months after EPA applied the first sanction, Kentucky had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Kentucky has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full

approval to Kentucky's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the Commonwealth of Kentucky upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

The Commonwealth of Kentucky has requested source category-limited interim approval of its part 70 operating permits program. EPA has concluded that the operating permit program submitted by Kentucky substantially meets the requirements of title V and part 70, and proposes to grant source category-limited interim approval to the program. For detailed information on the analysis of Kentucky's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Support Materials

Pursuant to section 502(d) of the Clean Air Act as amended (1990 Amendments), the Governor of each state must develop and submit to the Administrator an operating permits program under state or local law or under an interstate compact meeting the requirements of title V of the Act. Kentucky submitted, under the signature of Governor Brereton C. Jones, the operating permits program, prepared by the NREPC, to be implemented in all areas of the Commonwealth of Kentucky, except Jefferson County. Kentucky has requested that the EPA approve its operating permit program as a source category-limited interim program for a period of two years.

The Kentucky Federal Operating Permits program description, Section II of the submittal, addresses 40 CFR 70.4(b)(1) by describing how the NREPC intends to carry out its responsibilities under the part 70 regulations. This program description has been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the attorney general (or the attorney for the state air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The Commissioner of the Department of Law, who qualifies as independent legal counsel for the Kentucky Natural Resources and Environmental Protection Cabinet, submitted such an opinion in Section IV of the submittal, demonstrating adequate legal authority as required by Federal law and regulation for interim approval.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the implementation of the permit program. Section V of the NREPC submittal includes the permit application form with instructions, and Section 4 of the Title V Addendum includes a model permit. It has been determined that the application forms and model permit substantially meet the requirements of 40 CFR 70.5(c).

2. Regulations and Program Implementation

The Commonwealth of Kentucky has submitted Rule 401 KAR 50:034, ''Permit Application Form'', Rule 401 KAR 50:035, ''Permits,'' and Rule 401 KAR 50:038, ''Air Emissions Fee,'' for implementing the Kentucky part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption is included in Sections 1 and 4 of Kentucky's Title V Plan Addendum. Copies of all applicable Commonwealth statutes and regulations which authorize the part 70 program, including those governing Commonwealth administrative procedures, were submitted with Kentucky's program.

The Kentucky program, in Rule 401 KAR 50:035 Section 2, substantially meets the requirements of 40 CFR 70.2 and 70.3 with regard to applicability. However, Kentucky's definitions of ''emissions unit'', and ''stationary source'' do not include emissions of any pollutant listed under section 112(b) of the Act. Therefore, Kentucky's program does not require emissions of all hazardous air pollutants (HAP) listed pursuant to section 112(b) to be counted for major source applicability. The pollutants listed in section 112(b) are not considered regulated air pollutants until addressed by an applicable requirement, such as a maximum achievable control technology (MACT) standard; therefore, this omission in Kentucky's definitions prevents issuance of permits to sources that emit section 112(b) pollutants which are not yet covered by an applicable requirement. In addition, Kentucky's definition of ''regulated air pollutant'' found in 401 KAR 50:035, Section 1(28)(a)4., omits the phrase in the part 70 definition of regulated air pollutant ''* * * or other requirements established under Section 112 of the Act,* * *''; therefore, Kentucky's program does not require permits for all major sources. Since these omissions in Kentucky's definitions could cause certain part 70 major sources to be exempted from the permit process, Kentucky's program is eligible for receiving source category-limited interim approval (SCL).

Section 503(c) of the Act requires that permitting authorities, including those implementing an interim program, establish a schedule for issuing the permits subject to the program such that ''at least one-third of such permits will be acted on by such authority annually over a period not to exceed 3 years after such effective date.'' By rulemaking, the EPA spelled out an option by which it can make SCL interim approval. Thus, although the State is required to issue permits within 3 years to all sources subject to the interim approval, some sources will not be subject to the requirement to obtain a permit until full approval is granted. Because those part 70 sources not addressed until the full approval are also subject to the 3-year phase-in required by section 503(c), completion of the initial permitting of all part 70 sources might not be completed until as late as 5 years after the granting of interim approval.

Kentucky submitted a request dated May 22, 1995, for the EPA to grant SCL interim approval of its part 70 operating permit program. The EPA policy memo from John Seitz, Director of the Office of Air Quality Planning and Standards dated August 2, 1993, entitled ''Interim Title V Program Approvals'' establishes the criteria for granting interim approvals. EPA can grant SCL interim approval to states whose programs do not provide for permitting all required sources if the state makes a showing that two criteria were met: (1) That there were ''compelling reasons'' for the exclusions and (2) that all required sources will be permitted on a schedule that ''substantially meets'' the requirements of part 70.

EPA considers the omissions in Kentucky's definitions of ''emissions unit'', ''stationary source'', and ''regulated air pollutant'', as compelling reasons for granting SCL interim approval. Kentucky's SCL interim approval request included a revised transition schedule that demonstrates the Commonwealth will permit at least 60% of its sources and at least 80% of its emissions during the first three years. The revised transition plan demonstrates that all part 70 sources will be permitted on a schedule that substantially meets the requirements of part 70.

The EPA is therefore proposing to grant Kentucky SCL interim approval.

SCL interim approval will allow Kentucky to implement the revised transition schedule to permit all part 70 sources during the transition period after the permit regulations have been revised. Revision of the aforementioned definitions is a condition of full program approval.

Kentucky's program meets the following requirements set out in EPA's part 70 operating permits program review. These requirements are addressed in Kentucky's Rule 401 KAR 50:035 as follows: (A) Permit applications (40 CFR 70.5), Section 3; (B) Provisions for permit content (40 CFR 70.6), Section 4; (C) Operational flexibility provisions (40 CFR 70.4(b)(12)), Sections 4 and 6; (D) Provisions for permit renewals, reopenings, and public participation (40 CFR 70.7), Sections 5, 6, and 7; (E) Permit review by EPA and affected states (40 CFR 70.8), Sections 8 and 9. The Kentucky Revised Statutes, Chapter 224, satisfy the requirements of 40 CFR 70.11 for enforcement authority. The Kentucky program substantially meets the requirements of 40 CFR 70.7 with regard to permit issuance and revisions. Rule 401 KAR 50:035 Section 5(2)(a) allows for the incorporation of a preconstruction permit into the title V permit as an administrative amendment. Section 1(3)(e) defines administrative amendment as a revision to a permit that incorporates into the part 70 permit requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those that would be applicable to the change if it were subject to review as a permit revision (i.e., requirements of 40 CFR 70.7 and 70.8). Even though Section 5(2)(a) details the actual procedural requirements necessary to incorporate preconstruction permits into part 70 permits, it does not provide for EPA review consistent with 40 CFR 70.8. For full approval of the Commonwealth's program, Kentucky would need to revise Rule 401 KAR 50:035 Section 5(2)(a) to provide for EPA review consistent with 40 CFR 70.8.

Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state must request and EPA may approve as part of that state's program any activity or emission level that the state wishes to consider insignificant.

Kentucky establishes criteria for insignificant activities in Rule 401 KAR 50:035, Subsection 2(3); however, these criteria require that all activities be included in the application. By requiring description in the application, Kentucky's rule nullifies the effect of allowing for insignificant activities as contemplated by the part 70 rule, which would allow no or minimal description in the application. Since part 70 does not require a State to establish provisions for insignificant activities, this does not create a program approval issue. However, Kentucky has indicated to EPA that it plans to revise these provisions to take advantage of the flexibility allowed by Part 70. EPA will evaluate such revisions when they are submitted.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations. Rule 401 KAR 50:035, Subsection 4(1)(c)3.b. states that Kentucky will define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements.

Subsection 2(6) of Kentucky's general compliance requirements regulation, Rule 401 KAR 50:055, provides the Commonwealth the authority to grant individual variances for opacity standards for emissions from a stack or a control device. The Commonwealth provides that it will grant this variance upon a demonstration by the owner or operator that the affected facility and associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests. The EPA regards this provision as wholly external to the program submitted for approval under Part 70, and consequently proposes to take no action on these provisions of Commonwealth law in this rulemaking. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. In other words, a variance does not affect the title V source until the title V permit is modified pursuant to the procedures in part 70. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a Part 70 permit in a manner inconsistent with Part 70 procedures. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

The complete Kentucky operating permits program submittal and the TSD are available for review for more detailed information. The TSD contains the detailed analysis of Kentucky's program and describes the manner in which Kentucky's program meets all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (Consumer Price Index (CPI) adjusted from 1989). The $25 per ton amount is presumed, for program approval, to be sufficient to

cover all reasonable program costs and is thus referred to as the ''presumptive minimum.''

Kentucky has opted to adopt an approach similar to the ''presumptive minimum'' of $25/ton (annually adjusted by the CPI) approach. Emission fees will be collected from all sources subject to title V for actual emissions of each regulated pollutant, except carbon monoxide. Also, fees will be assessed on the first 4,000 tons per regulated pollutant per facility. A minimum fee of $150 is assessed for sources emitting less than 25 tons per year.

A unique feature of the Kentucky emission fee is that the amount of fee to be collected is established in regulation. Kentucky Rule 401 KAR 50:038 provides for the collection of $6,594,700 during state fiscal year 1995–96. It further provides the authority to collect an amount during each subsequent fiscal year, increased in direct proportion to the CPI if needed to fund the program. While this guarantees that Kentucky will continue to have the funds necessary to operate the title V program at a level at least equal to the 1995–96 level, it does not guarantee that the cost per ton of emissions will increase at a rate equal to the CPI.

For 1995–96, Kentucky estimates the total billable emissions to be 211,919 tons. Based upon that estimate, the average cost per ton for all sources, including any non-major sources subject to the title V program, in 1995–96 will be $31.19 per ton. If the fee was collected only from major sources, the estimated cost per ton would be $34.32 per ton. Kentucky has demonstrated that the fees collected will be sufficient to administer the program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation. Kentucky has demonstrated in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements. This legal authority is contained in Kentucky's enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. Kentucky has further supplemented its broad legal authority with a commitment to ''take action, following promulgation by EPA of regulations implementing section 112 of Title III of the Clean Air Act to either incorporate such new or revised provisions by reference into Kentucky rules or submit Kentucky-drafted rules, for EPA approval, to implement these provisions.'' EPA has determined that this commitment, in conjunction with Kentucky's broad statutory and regulatory authority, adequately assures compliance with all section 112 requirements. EPA regards this commitment as an acknowledgement by Kentucky of its obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that Kentucky is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this proposed interim approval.

b. Implementation of Section 112(g) Upon Program Approval. EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Kentucky must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Commonwealth regulations.

EPA is aware that Kentucky lacks a program designed specifically to implement section 112(g). However, Kentucky does have a preconstruction review program within its permits rule that can serve as an adequate implementation vehicle during the defined transition period because it would allow the Commonwealth to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of Kentucky's preconstruction review program found in Rule 401 KAR 50:035, under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a Commonwealth rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until Commonwealth regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the Commonwealth to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the Commonwealth's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the Commonwealth's program for receiving delegation of future section 112 standards that are unchanged from the Federal standards as promulgated. In addition, EPA proposes delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[1]

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Kentucky has informed EPA that it intends to accept delegation of section 112 standards through adoption by reference. The details of the Commonwealth's use of these delegation mechanisms are set forth in a letter dated April 14, 1995, submitted by Kentucky as a title V program addendum.

d. Commitment to implement Title IV of the Act. The Commonwealth of Kentucky developed acid rain permit regulations as Rule 401 KAR 50:072, which was submitted to EPA on April 19, 1995, as part of the operating permits program. The Commonwealth also submitted standard acid rain permit application forms which will be revised as updated forms are provided by the EPA. These rules and permit application forms meet the requirements of the acid rain program.

B. Proposed Actions

1. Source Category-Limited Interim Approval

The EPA is proposing to grant SCL interim approval to the operating permit program submitted by Kentucky on December 27, 1993, and as supplemented on November 15, 1994, April 14, 1995, May 3, 1995, and May 22, 1995. If this approval is promulgated, the State must make the following changes to receive full approval: (1) Revise the definitions of ''emissions unit'' and ''stationary source'' to include emissions of any pollutant listed under section 112(b) of the Act; (2) revise the definition of ''regulated air pollutant'' to include any pollutant subject to any requirements established under section 112 of the Act; and (3) revise Rule 401 KAR 50:035 section 5(2)(a) to provide for EPA review consistent with 40 CFR 70.8. in order to allow for requirements from preconstruction review permits to be incorporated into part 70 permits via administrative amendments.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the Commonwealth is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the Commonwealth. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

2. Program for Straight Delegation of Section 112 Standards

As discussed above in section II.A.4.c, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the Commonwealth's program for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated. Additionally, EPA is proposing to delegate existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the Commonwealth's submittal and other information relied upon for the proposed interim approval are contained in docket number KY–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by October 5, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under 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 estimated costs to state, local, or tribal governments in the aggregate; or to 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 proposed approval 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 Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 22, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–21938 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 372

[OPPTS–400096; FRL–4970–5]

Diethyl Phthalate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is granting a petition by proposing to delete diethyl phthalate (DEP) from the list of chemicals subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). Specifically, EPA is proposing to delete DEP because the Agency has preliminarily concluded that it meets the deletion criteria of EPCRA section 313(d)(3).

DATES: Written comments on this proposed rule must be received by EPA on or before November 6, 1995.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Nonconfidential

Information Center (NCIC), (7407), Environmental Protection Agency, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number for this proposal, OPPTS–400096.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@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 OPPTS–400096. No 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 in Unit VI. of this document.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202–260–9592, e-mail: doa.maria@epamail.epa.gov, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. DEP was included in the initial list of chemicals and chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (November 30, 1994; 59 FR 61439).

II. Description of Petition and General Information

On February 7, 1995, the Fragrance Materials Association petitioned the Agency to delete DEP (Chemical Abstract Service (CAS) No. 84–66–2) from the EPCRA section 313 list of toxic chemicals. The petitioner contends that DEP, which is mainly used as a plasticizer, should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria.

DEP is listed on several environmental statutory lists other than EPCRA. It is on the list of hazardous substances (40 CFR 302.4) under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601–9675) with a reportable quantity of 1,000 pounds and is listed under section 3001 of the Resource Conservation and Recovery Act (42 U.S.C. 6921). In addition, DEP is a priority water pollutant under section 307(a) of the Clean Water Act (33 U.S.C. 1317).

III. EPA's Technical Review of DEP

The technical review of the petition to delete DEP includes an analysis of production, release, health and environmental effects, and exposure and fate (Refs. 1, 2, 3, 4, and 5).

A. Chemistry.

DEP has low volatility (boiling point: 295 °C; vapor pressure: 0.00165 torr), and high water solubility (1 gram/liter (g/L)).

B. Toxicological Evaluation

1. *Absorption and metabolism*. There is evidence from a toxicity study that DEP is absorbed from the gastrointestinal tract. There are no data on lung absorption of DEP following inhalation. A dermal absorption study using rats indicated that 50 percent of the dermal dose was absorbed in 7 days. *In vitro* studies indicate that the major metabolite of DEP is the monoester.

2. *Acute toxicity*. DEP has low acute toxicity. The oral median lethal dose (LD_{50}) in rabbits is 1 gram/kilogram (g/kg); intraperitoneal LD_{50} values in rats and mice are greater than 5.6 and 2.8 g/kg, respectively.

3. *Carcinogenicity*. There is insufficient evidence to reasonably anticipate that DEP would cause cancer in humans. In a National Toxicology Program dermal bioassay, there was no evidence of carcinogenicity in male and female rats. However, there were increased incidences of hepatocellular adenomas (benign tumors) in male and female mice. These findings were considered equivocal because: (1) The incidence of hepatocellular neoplasms in control and dosed males was within the historical range; and (2) in the females, there was no clear dose-response relationship. In an initiation-promotion study, there was no evidence of initiating activity of DEP in male mice.

4. *Mutagenicity*. The overall weight of evidence from several mutagenicity assays indicates that DEP is not of concern for mutagenicity. DEP did not induce gene mutations in prokaryotes or chromosome mutations in mammalian cells in culture. The only positive mutagenicity data are for DNA effects (sister chromatid exchanges) in mammalian cells in culture.

5. *Systemic toxicity*. Based on subchronic and chronic feeding studies in rats, DEP has low systemic toxicity. Body weight loss was the primary effect in all available studies and it was seen only at the highest dose, 5 percent of the diet or approximately 3,160 milligrams/kilogram/day (mg/kg/day). The no-observed-adverse-effect-level (NOAEL) was 750 mg/kg/day.

6. *Developmental/reproductive toxicity*. The available animal data indicate that DEP does cause developmental effects, but only at high doses (greater than 3,000 mg/kg/day). The reproductive effects seen in

animals, also at high doses, were not biologically significant.

Supernumerary ribs were noted in the offspring of rats fed DEP in the diet at 5 percent concentration (about 3,210 mg/kg/day). The NOAEL for developmental toxicity was 2.5 percent of the diet (about 1,910 mg/kg/day), and the NOAEL for maternal toxicity was about 0.25 percent of the diet (about 200 mg/kg/day). In another study, supernumerary ribs and other skeletal abnormalities were noted in rats administered 568, 1,136, and 1,793 mg/kg of DEP intraperitoneally on gestation days 5, 10, and 15. This study is limited, however, because the animals were not dosed throughout gestation.

In a reproduction study in mice, dietary administration of DEP at 2.5 percent of the diet (approximately 3,750 mg/kg/day) produced decreases in sperm concentration and body weight, and increases in prostate weight in the F_1 generation. There was no biologically significant impairment of fertility or development after fertilization. Therefore, the highest dose tested, 2.5 percent of the diet, was considered as the NOAEL for reproductive effects.

7. *Neurotoxicity*. There are no data to support a concern for neurotoxicity.

8. *Environmental effects*. DEP does not pose a significant environmental hazard. It exhibits low toxicity to aquatic organisms and it is not likely to bioconcentrate. The fish 96–hr median lethal concentration (LC_{50}) values range from 12 to 110 milligrams/liter (mg/l). Daphnid 48-hr LC_{50} values range from 50 to 90 mg/l, and algae 96–hr median effective concentration (EC_{50}) values range from 30 to 86 mg/l. The bioconcentration factor (BCF) in fish is 117, which indicates low bioconcentration potential. In the environment, DEP will undergo hydrolysis to the monoester, which is less toxic than DEP to aquatic organisms.

C. Production, Use and Release

DEP is produced by refluxing one equivalent of phthalic anhydride with a greater than two-fold excess of ethanol in the presence of one percent of concentrated sulfuric acid. The U. S. production volume in 1989 was 11 million kilograms (24.2 million pounds) with an estimated annual import volume of 100,000 kilograms (220,000 pounds). The primary use of DEP (90 percent consumption) is as a plasticizer for cellulose-based products used in making recording tapes, photographic films, food wrap, and molded and extruded plastic articles. It is also used as a carrier or fixative in cosmetics in concentrations ranging from 0.1 percent to 50 percent. In addition, DEP is also used in solvents, varnishes, dyes, coating agents for foodstuffs, and insect repellents.

The Toxic Release Inventory (TRI) data indicate that during 1993 a total of 159,386 pounds of DEP were released to the environment. Of that total, 93,471 pounds were released to air, 260 pounds were released to water, and 505 pounds were released to land. In addition, a total of 851,894 pounds of DEP were transferred to various off-site locations. Of that total, 302,115 pounds were transferred to public owned treatment works (POTWs) prior to being discharged to surface waters.

D. Exposure and Fate Analysis

The two principal and relevant fate processes for DEP in the environment are reaction with photochemically-generated hydroxyl radicals in the atmosphere and aerobic biodegradation in soil and water. A half-life of 22.2 hours at 25 °C was estimated from reaction of DEP vapor with photochemically-generated hydroxyl radicals. When DEP is aerobically biodegraded in a semicontinuous activated sludge system (SCAS), greater than 95 percent was degraded in 24 hours. In a screening test, a half-life of 2.2 days was measured when DEP is incubated with a mixed microbial population. Removal of DEP by anaerobic biodegradation, oxidation, chemical hydrolysis, and direct photolysis, as well as, from volatilization and bioaccumulation in aquatic organisms should not be significant.

Because DEP has low chronic mammalian toxicity, the Agency conducted an exposure assessment for chronic human exposure. Nationwide releases to air and surface water retrieved from the TRI data base were modeled using TRIAIR and TRIWATER models.

Based on 1992 TRI data, the highest estimated DEP air concentration to which people are expected to be exposed is 3.5 micrograms/cubic meter (ug/m^3); about 129 people live in the area in which this concentration is expected to occur. The Lifetime Average Daily Potential Dose ($LADD_{pot}$) calculated based on the estimated atmospheric concentrations is 0.001 mg/kg/day. Based on 1992 data, the highest estimated DEP acute concentration at five drinking water utility intakes under low flow conditions is about 2 parts per billion (ppb); this results in a $LADD_{pot}$ of about 4.5-6.5 x 10^{-5} mg/kg/day; about 40,160 people are potentially exposed at this level. The highest estimated DEP chronic concentration at five drinking water utility intakes under medium flow conditions is about 0.3 ppb; this results in a $LADD_{pot}$ of about 1 x 10^{-5} mg/kg/day; about 40,160 people are potentially exposed at this level.

The above estimated doses are well below the Agency's reference dose (RfD) of 0.8 mg/kg/day that is considered significantly protective of human health. This observation further suggests that the exposure estimates are not likely to result in adverse health risks in humans from acute or chronic exposure to DEP from the atmosphere or from drinking water as a result of continuous or frequently, recurring releases from facility sites.

E. Summary of EPA's Assessment

EPA's toxicological evaluation of the current data on DEP indicates that it exhibits acute, systemic, and developmental and reproductive toxicities only at relatively high doses. Furthermore, DEP exhibits low toxicity to aquatic organisms, and is not likely to bioconcentrate. Releases of DEP will not result in exposures of concern for adverse human health risks. Based on the total weight of available data, DEP cannot reasonably be anticipated to cause a significant adverse effect on human health or the environment.

F. Rationale for Granting

EPA is granting the petition by proposing to delete DEP from the EPCRA section 313 list. Based on current data, EPA preliminarily concludes that DEP does not meet the toxicity criteria of EPCRA section 313(d)(2)(A) because DEP exhibits acute oral toxicity only at levels that greatly exceed estimated resultant exposures. Specifically, DEP cannot reasonably be anticipated to cause ''. . . significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases.''

EPA has preliminarily concluded that there is not sufficient evidence to establish that DEP meets the criterion of EPCRA section 313(d)(2)(B), because it cannot reasonably be anticipated to cause teratogenic effects, immunotoxicity, neurotoxicity, or liver or kidney toxicity, and it cannot be anticipated to cause reproductive or developmental toxicity except at relatively high dose levels. EPA believes that DEP has low chronic toxicity and accordingly has considered exposure factors. As stated above, EPA believes that anticipated exposure concentrations of DEP are not expected to result in significant adverse effects. Therefore, EPA has preliminarily

concluded that DEP does not meet the EPCRA section 313(d)(2)(B) listing criterion.

EPA has also preliminarily determined that DEP does not meet the toxicity criterion of EPCRA section 313(d)(2)(C) because it cannot reasonably be anticipated to cause adverse effects on the environment of sufficient seriousness to warrant continued reporting.

Thus, in accordance with EPCRA section 313(d)(3), EPA is proposing to delete DEP from the section 313 list of toxic chemicals.

IV. Request for Public Comment

EPA requests public comment on this proposal to delete DEP from the list of chemicals subject to EPCRA section 313. Comments should be submitted to the address listed under the ADDRESSES unit. All comments must be received by EPA on or before [Insert date 60 days after date of publication in the **Federal Register**].

V. Rulemaking Record

A record has been established for this proposal under docket number ''OPPTS–400096'' (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 confidential business information (CBI), is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@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 proposal, 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 rulmaking 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. References

(1) USEPA, OPPTS. 1995. Chemistry Report on Diethyl Phthalate by Stephen C. DeVito, Industrial Chemistry Branch, Economics, Exposure, and Technology Division. Office of Pollution Prevention and Toxics. (May 8, 1995).

(2) USEPA, OPPTS. 1995. Economic Analysis of the Proposed Deletion of Diethyl Phthalate from the EPCRA Section 313 List of Toxic Chemicals by Fred Arnold, Regulatory Impacts Branch, Economics, Exposure, and Technology Division, Office of Pollution Prevention and Toxics. (April 5, 1995).

(3) USEPA, OPPTS. 1995. Memorandum from Lorraine M. Randecker, Hazard Integrator, Chemical Screening and Risk Assessment Division, with attachments, re: Petition to Delist Diethyl Phthalate. (April 24, 1995).

(4) USEPA, OPPTS. 1995. Engineering Report for the Proposed Delisting of Diethyl Phthalate from the EPCRA Section 313 List of Toxic Chemicals by Monica Sweet, Chemical Engineering Branch, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics. (April 3, 1995).

(5) USEPA, OPPTS. 1995. Memorandum from Andrew Mamantov, Exposure Assessment Branch, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics, with attachments, re: Diethyl Phthalate (DEP) Delisting Petition Fate and Exposure Assessment. (June 15, 1995).

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not ''significant'' and therefore not subject to OMB review.

EPA estimated that the delisting of DEP from the EPCRA section 313 toxic chemical list would result in a total annual cost savings to industry of $124,200. The cost savings to EPA are estimated at $3,000.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the proposed rule. Because this proposed rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local, or tribal governments, and the private sector. This action does not result in the expenditure of $100 million or more by any State, local, or tribal governments, or by anyone in the private sector. The costs associated with this action are described in the Executive Order 12866 unit above.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: August 27, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 372 be amended to read as follows:

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by removing the entire entry for diethyl phthalate under paragraph (a) and removing the entire CAS No. entry for 86–66–2 under paragraph (b).

[FR Doc. 95–21943 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7149]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the

floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Illinois	Aurora (City) Kane and DuPage Counties.	Blackberry Creek	At Jericho Road	*665	*666
			Approximately 0.8 mile upstream of confluence of Blackberry Creek Tributary A.	None	*676
		Blackberry Creek Tributary A.	At confluence with Blackberry Creek	None	*674
			Approximately 0.4 mile upstream of Indian Trail Road.	None	*674
		Blackberry Creek Tributary H.	Approximately 0.7 mile downstream of Prairie Street.	None	*666
			At Galena Boulevard	None	*673
Maps available for inspection at the Planning Department, City Hall, 44 East Downer Place, Aurora, Illinois.					
Send comments to The Honorable David Pierce, Mayor of the City of Aurora, 44 East Downer Place, Aurora, Illinois 60507–2067.					
Illinois	Kane County (Unincorporated Areas).	Blackberry Creek	At State Route 30	*659	*661
			At downstream side of State Route 38	None	*846
		Blackberry Creek Tributary A.	Approximately 2,450 feet downstream of Indian Trail Road.	*673	*674
			At East-West Tollway	*678	*679
		Blackberry Creek Tributary B.	At confluence with Blackberry Creek	*675	*679

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.6 mile upstream of Seavey Road.	*696	*698
		Blackberry Creek Tributary C.	At confluence with Blackberry Creek	*706	*707
			Approximately 1.7 miles upstream of Seavey Road.	*721	*723
		Blackberry Creek Tributary D.	At confluence with Blackberry Creek	*739	*740
			At Keslinger Road	*807	*810
		Blackberry Creek Tributary E.	At Hankes Road	*678	*680
			Approximately 4,400 feet upstream of Winthrop Drive.	None	*688
		Blackberry Creek Tributary F.	At confluence with Blackberry Creek Tributary B.	*695	*698
			Approximately 210 feet upstream of Main Street.	None	*735
		Blackberry Creek Tributary G.	Approximately 150 feet downstream of State Route 30.	None	*657
			Approximately 1,650 feet downstream of Jericho Road.	*663	*664
		Blackberry Creek Tributary H.	At confluence with Blackberry Creek	*665	*666
			Approximately 2,400 feet upstream of Burlington Northern Railway.	None	*670
		Bowes Creek	At the confluence with Stoney Creek	None	*793
			Approximately 200 feet upstream of Dittman Road.	None	*918
		Bowes Creek Tributary	At the confluence with Bowes Creek	None	*909
			Approximately 200 feet upstream of Dittman Road.	None	*914
		Ferson Creek	At Bolcum Road	*752	*753
			Approximately 75 feet upstream of State Route 64 (North Avenue).	None	*873
		Fitchie Creek	At the confluence with Otter Creek	None	*782
			Approximately 200 feet upstream of Russell Road.	None	*878
		Hampshire Creek	Approximately 1,225 feet downstream of confluence of Hampshire Creek Tributary.	None	*869
			Approximately 1,225 feet upstream of 500 Line Railroad.	None	*966
		Hampshire Creek Tributary	Approximately 345 feet downstream of Field Bridge.	*868	*874
			Approximately 100 feet upstream of Field Bridge.	*873	*874
		Hampshire Creek Tributary 1.	At the confluence with Hampshire Creek .	None	*898
			Approximately 725 feet upstream of Keyes Drive.	None	*904
		Hampshire Creek Tributary 2.	Approximately 100 feet upstream of the confluence with Hampshire Creek.	None	*907
			Approximately 70 feet upstream of Prairie Farm Road.	None	*980
		Hampshire Creek Tributary 3.	At the confluence with Hampshire Creek Tributary No. 2.	None	*963
			Approximately 1,280 feet upstream of confluence with Hampshire Creek Tributary No. 2.	None	*996
		Hampshire Creek Tributary 4.	At the confluence with Hampshire Creek .	None	*965
			Approximately 640 feet upstream of confluence with Hampshire Creek.	None	*967
		Mill Creek	Approximately 0.5 mile downstream of Kaneville Road.	*705	*704
			Approximately 250 feet upstream of State Route 64 (Wasco Road).	None	*823
		Mill Creek Tributary No. 2	At the confluence with Mill Creek Diversion Channel.	None	*792

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Approximately 0.4 mile upstream of confluence with Mill Creek Diversion Channel.	None	*793	
		Mill Creek	At the confluence with Mill Creek	None	*784
		Diverson Channel	Approximately 0.9 mile upstream of confluence with Mill Creek.	None	*796
		Otter Creek	At the confluence with Ferson Creek	None	*756
			Just downstream of Randall Road	None	*797
		Otter Creek Tributary	At the confluence with Otter Creek	None	*760
			Approximately 1.1 miles upstream of Falcons Trail.	None	*840
		Stoney Creek	At the confluence with Otter Creek	None	*773
			Approximately 1.0 mile upstream of Crawford Road.	None	*873
Maps available for inspection at the Government Center, 719 Batavia Avenue, Geneva, Illinois.					
Send comments to Mr. Warren Kammerer, Jr., Chairman of the Kane County Board of Supervisors, Government Center, 719 Batavia Avenue, Geneva, Illinois 60134					
Indiana	La Porte County (unincorporated areas).	Pine Lake	Entire shoreline within county	None	*802
Maps available for inspection at the La Porte County Complex, 5th Floor, 822 East Lincoln Way, La Porte, Indiana.					
Send comments to Mr. Michael Quinn, La Porte County Commissioner, 822 East Lincoln Way, La Porte, Indiana 46350.					
Indiana	La Porte (City) La Porte County.	Pine Lake	Entire shoreline within community	None	*802
		Stone Lake	Entire shoreline within community	None	*802
		Lily Lake	Entire shoreline within community	None	*802
		Clear Lake	Entire shoreline within community	None	*802
Maps available for inspection at the City Engineer's Office, La Porte City Hall, 801 Michigan Avenue, La Porte, Indiana.					
Send comments to The Honorable Elmo Gonzales, Mayor of the City of La Porte 801 Michigan Avenue, La Porte, Indiana 46350.					
Maine	Starks (Town) Somerset County	Kennebec River	At the confluence of Sandy River	None	*193
			Approximately 1.7 miles upstream of the confluence of Sandy River (upstream corporate limits)	None	*201
		Sandy River	At the confluence with Kennebec River	None	*193
			Approximately 2.5 miles upstream of Sandy River Dam.	None	*202
				None	
Maps available for inspection at the Starks Town Hall, R.R.1 Box 241, Starks, Maine.					
Send comments to Ms. Anita Reichenbach, First Selectman for the Town of Starks, R.R.1 Box 241, Starks, Maine 04911.					
Mississippi	Columbus (City) Lowndes County.	Moore Creek	Approximately 900 feet upstream of Willowbrook Road.	*176	*177
			At the upstream corporate limits of the City of Columbus.	*176	*180
Maps available for inspection at the City Hall, 523 Main Street, Columbus, Mississippi.					
Send comments to The Honorable Jimmy Fannon, Mayor of the City of Columbus, P.O. Box 1408, Columbus, Mississippi 39703.					
Mississippi	Lowndes County (Unincorporated Areas).	Moore Creek	At Columbus and Greenville Railway	*182	*181
			Approximately 250 feet upstream of Columbus and Greenville Railway.	*182	*181
		Ellis Creek Tributary	Approximately 3,400 feet upstream of the confluence with Ellis Creek.	*187	*188
			At Hildreth Road	*211	*206
Maps available for inspection at the Lowndes County Inspection Department, 17 Airline Road, Columbus, Mississippi.					
Send comments to Mr. Johnny MacCrary, President of Lowndes County Board of Supervisors, P.O. Box 1364, Columbus, Mississippi 39703.					
North Carolina	Asheville (City) Buncombe County.	Bull Creek	At confluence with Swannanoa River	None	*2108
	xl	At Bull Creek Road	None	*2289	
		Beaverdam Creek	Approximately 500 feet downstream of Elkwood Avenue.	*2055	*2056

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At Governors Drive	None	*2259
		Sweeten Creek	At confluence with Swannanoa River	*1999	*1998
			Approximately 900 feet upstream of Rock Hill Road.	None	*2192
		Tributary No. 3 to Sweeten Creek.	At confluence with Sweeten Creek	None	*2018
			At Taft Street	None	*2136
		Ross Creek	At confluence with Swannanoa River	*2001	*2002
			At Howland Road	*2333	*2345
		Haw Creek	Approximately 0.1 mile upstream of confluence with Swannanoa River.	*2007	*2008
			At Mann Drive	.....	.....
		Smith Mill Creek	Approximately 685 feet upstream of Southern Railway.	*1980	*1981
			Approximately 0.2 mile downstream of Johnston School Road.	*2161	*2162
		Swannanoa River	Approximately 1,425 feet downstream of U.S. 25 Viaduct.	*1991	*1992
			At U.S. Highway 70	*2059	*2060
		Tributary No. 1 to Sweeten Creek.	At confluence with Sweeten Creek	*2085	*2082
			Approximately 105 feet upstream of the confluence with Sweeten Creek.	*2085	*2082
		Hominy Creek	At 0.29 mile upstream of Sand Hill Road	*2055	*2056
			Approximately 0.75 mile upstream of Sand Hill Road.	*2057	*2058
		Moore Creek	Approximately 53 feet upstream of State Route 1241.	*2062	*2061
			Approximately 550 feet upstream of Interstate 40.	*2131	*2129
Maps available for inspection at the Planning Department, 70 Court Plaza, Asheville, North Carolina.					
Send comments to The Honorable Russell M. Martin, Mayor of the City of Asheville, P.O. Box 7149, Asheville, North Carolina 28802–7148					
North Carolina	Black Mountain (Town).	Flat Creek	At confluence with Swannanoa River	*2359	*2358
	Buncombe County		At downstream side of Cotton Avenue	*2404	*2403
		Swannanoa River	Approximately 200 feet upstream of confluence with North Fork Swannanoa River.	*2231	*2233
			Approximately 1,003 feet downstream of Old Toll Circle.	*2399	*2398
Maps available for inspection at the Building Inspector's Office, 106 Montreat Road, Black Mountain, North Carolina.					
Send comments to The Honorable Carl Bartlett, Mayor of the Town of Black Mountain, 102 Montreat Road, Black Mountain, North Carolina 28711.					
North Carolina	Buncombe County (Unincorporated Areas).				
		Tributary to Beaverdam Creek.	At Hillcrest Road	None	*2098
			Approximately 800 feet upstream of Hillcrest Road.	None	*2107
		Hominy Creek	At Interstate Route 40	*2020	*2021
			At Luther Road	None	*2178
		Smith Mill Creek	At Johnston School Road	None	*2165
			Approximately 0.44 mile upstream of Johnston School Road.	None	*2205
		Newfound Creek	Approximately 1.0 mile downstream of State Road 63 (Leicester Highway).	None	*1968
			At Morgan Branch Road (State Route 1220).	None	*2155
		Moore Creek	Approximately 0.46 mile (2,428 feet) downstream of Interstate 40.	*2083	*2084
			At Monte Vista Road (State Route 1224)	*2200	*2202
		Swannanoa River	At U.S. Highway 70	*2059	*2060

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.8 mile upstream of County Road.	*2516	*2519
		Bull Creek	Approximately 150 feet upstream of confluence with Swannanoa River.	None	*2108
			At Bull Creek Road	None	*2289
		McKinnish Branch	Upstream side of Cove Road	None	*2158
			Approximately 370 feet upstream of Cove Road.	None	*2165
		Pole Creek	At confluence with Hominy Creek	*2085	*2086
			Approximately 330 feet downstream of U.S. Routes 19 and 23.	*2085	*2086
Maps available for inspection at the Office of Emergency Management Services, 60 Courthouse Plaza, Asheville, North Carolina.					
Send comments to Mr. Bill McElrath, Buncombe County Manager, 1 Oak Plaza, Asheville, North Carolina 28801.					
North Carolina	Woodfin (Town) Buncombe County.	Beaverdam Creek	At confluence with French Broad River	*1942	*1941
			Just downstream of U.S. Highway 19 and 23.	*2041	*2040
		Tributary to Beaverdam Creek.	At confluence with Beaverdam Creek	*2048	*2049
			At Hillcrest Road	*2095	*2098
Maps available for inspection at the Town Administrator's Office, 90 Elk Mountain Road, Woodfin, North Carolina.					
Send comments to The Honorable Steven R. Henderson, Mayor of the Town of Woodfin, 90 Elk Mountain Road, Woodfin, North Carolina 28804.					
Ohio	Fairfield County (Unincorporated Areas).	Raccoon Run	At the upstream face of State Route 664 .	*792	*791
			Approximately 400 feet upstream of Zion Road.	*807	*806
Maps available for inspection at the Regional Planning Office, Fairfield County Courthouse, 210 East Main Street, Lancaster, Ohio.					
Send comments to Ms. Judith K. Shupe, President of the Fairfield County Board of Commissioners, Fairfield County Courthouse, 210 East Main Street, Room 301, Lancaster, Ohio 43130.					
Ohio	Kenton (City) Hardin County.	Scioto River	At County Road 175	*None	*959
			At a point approximately 0.56 mile upstream of Leighton Street.	*None	*966
Maps available for inspection at the Kenton City Hall, 111 West Franklin Street, Kenton, Ohio.					
Send comments to The Honorable Clay Flinn, Mayor of the City of Kenton, 111 West Franklin Street, Kenton, Ohio 43326.					
Pennsylvania	German (Township) Fayette County.	Monongahela River	At confluence of Antram Run	*790	*789
			At upstream corporate limits	*None	*2798
Maps available for inspection at the German Township Building, R.D. #1, Box 287, McClellandtown, Pennsylvania.					
Send comments to Mr. Vincent Serra, Secretary of the German Township Board of Supervisors, R.D. #1, Box 287, McClellandtown, Pennsylvania 15458.					
Pennsylvania	Smithfield (Township) Huntingdon County.	Juniata River	Approximately 2,650 feet above confluence of Raystown Branch Juniata River.	*614	*608
			Upstream corporate limits	*642	*639
		Crooked Creek	At confluence with Juniata River	*620	*619
			Approximately 0.71 mile upstream of confluence with Juniata River.	*620	*619
Maps available for inspection at the Smithfield Township Building, 13th and Mt. Vernon Avenue, Huntingdon, Pennsylvania.					
Send comments to Mr. Robert Kepner, Chairman of the Smithfield Township Board of Supervisors, Smithfield Township Building, 13th and Mt. Vernon Avenue, Huntingdon, Pennsylvania 16652.					
Puerto Rico	Commonwealth	Espiritu Santo River	Approximately 0.65 kilometer upstream of the confluence with the Atlantic Ocean.	*2.1	*2.2
			Approximately 4.61 kilometers upstream of the confluence with the Atlantic Ocean.	*2.8	*6.9

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Rio Guanajibo	Approximately 1,200 meters downstream of Puerto Rico Highway 2.	*80.1	*80.0
			Approximately 920 meters downstream of Puerto Rico Highway 368.	*None	*100.8
/*/Elevation in meters (Mean Sea Level)					
Maps available for inspection at the North Minillas Building, Dediezo Avenue, 22 Top, Santurce, Puerto Rico.					
Send comments to Ms. Norma N. Burgos, Chairwoman of the Puerto Rico Planning Board, Minillas Station, P.O. Box 41119, San Juan, Puerto Rico 00940–1119.					
Virginia	Smyth County (Unincorporated Areas).	Middle Fork Holston River	North of Interstate 81 and southwest of the Town of Chilhowie corporate limits.	*None	*1944
Maps available for inspection at the Smyth County Courthouse, Building Inspector's Department, 109 West Main, Marion, Virginia.					
Send comments to Mr. Rhea B. Lawrence, Smyth County Board of Supervisors, P.O. Box 188, Marion, Virginia 24354.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21921 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

[Docket No. FEMA–7153]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Kansas	Derby (City), Sedgwick County.	Spring Creek	Just upstream of State Highway 15	*1,251	*1,251
			At the confluence of Dry Creek	*1,266	*1,265
			Just downstream of Rock Road	None	*1,269
			Approximately 4,300 feet upstream of Rock Road, at the City of Derby corporate limits.	None	*1,275
		Dry Creek	Approximately 1,300 feet downstream of Meadowlark Road.	*1,283	*1,284
			Just downstream of Meadowlark Road	*1,287	*1,287
			Approximately 4,500 feet downstream of 63rd Street.	None	*1,296
			Just downstream of 63rd Street	None	*1,307
Maps are available for inspection at Derby City Hall, 611 North Mulberry, Derby, Kansas.					
Send comments to The Honorable K.O. LaVergne, Mayor, City of Derby, 611 North Mulberry, Derby, Kansas 67037.					
Oklahoma	Pauls Valley (City), Garvin County.	Rush Creek	Approximately 2,700 feet downstream of the Gulf, Colorado and Santa Fe Railroad, at the extraterritorial limits.	*856	*856
			At U.S. Highway 77 (Chickasaw Avenue)	*873	*873
			Just downstream of South Paul Street	*878	*877
			Approximately 500 feet upstream of Interstate Highway 35.	*884	*886
			Approximately 1,800 feet upstream of Interstate Highway 35.	*885	*887
		Rush Creek (Area North of Levee).	On the projection of Leslie Avenue, between Rush Creek and the railroad.	*869	*869
			At intersection of Garvin Avenue and Chickasaw Street.	*871	*873
			At intersection of Grant Avenue and Pine Street.	None	*875
			At intersection of Agnew Avenue and Pine Street.	None	*878
Maps are available for inspection at City Hall, City of Pauls Valley, 220 West Paul Avenue, Pauls Valley, Oklahoma.					
Send comments to The Honorable Kirk Dunham, Mayor, City of Pauls Valley, P.O. Box 778, Pauls Valley, Oklahoma 73075.					
Oklahoma	Stillwater (City), Payne County.	Boomer Creek	At confluence with Stillwater Creek	*857	*858
			Just upstream of East 19th Avenue (corporate limits).	*859	*859
			Approximately 500 feet upstream of East 12th Avenue.	*862	*863
			Approximately 950 feet downstream of South Perkins Road.	*865	*865
			At confluence of East and West Boomer Creeks.	*870	*866
		East Boomer Creek	At confluence with Boomer Creek	*870	*866
			Approximately 100 feet upstream of Virginia Avenue.	*876	*872
			Approximately 100 feet upstream of Hall of Fame Avenue.	*878	*877
			Approximately 300 feet downstream of East McElroy Road.	*880	*880
		West Boomer Creek	At confluence with Boomer Creek	*870	*866
			Approximately 100 feet upstream of Virginia Avenue.	*876	*876
			Approximately 200 feet upstream of South Husband Street.	*885	*885
			Approximately 200 feet downstream of Knoblock Street.	*893	*892
			Just downstream of Moore Avenue	*899	*904
			Approximately 700 feet upstream of Washington Street.	*905	*906
			Approximately 50 feet upstream of Lakeview Road.	*913	*915

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

Maps are available for inspection at the Public Works Department, City of Stillwater, 723 South Lewis Street, Stillwater, Oklahoma.
Send comments to The Honorable Terry Miller, Mayor, City of Stillwater, City Hall, P.O. Box 1449, Stillwater, Oklahoma 74076.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21922 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 40 and 154

[CGD 82–058]

Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking was initiated to amend the Coast Guard's regulations concerning safety standards for self-propelled vessels carrying bulk liquefied gases. The proposed rules would have aligned the regulations with the amendments to the International Maritime Organization (IMO) Code on which the regulations were based. At this time, the Coast Guard wishes to focus its available resources on actions of higher priority. Therefore, the Coast Guard is terminating further rulemaking under docket number 82–058.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas J. Felleisen, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267–1217.

SUPPLEMENTARY INFORMATION: On June 6, 1994, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (59 FR 29259). The Coast Guard received one letter commenting on the NPRM. No public hearing was requested, and none was held.

After a comprehensive review of its active regulatory program, the Coast Guard has determined that this rulemaking is of relatively low priority at this time. International rules for gas carriers are sufficient, and no new gas carrier building in this country is anticipated in the near future. The Coast Guard wishes to focus its available resources on actions of the highest priority and has determined that the best course of action is to terminate further rulemaking under docket number 82–058. In keeping with the President's direction to Federal agencies to review their regulations, the Coast Guard will reexamine this issue at some point in the future to determine if further rulemaking is necessary. Based on these considerations, the Coast Guard is terminating further rulemaking under docket number 82–058.

Dated: August 18, 1995.

J.C. Card,

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

[FR Doc. 95–21962 Filed 9–1–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13 and 17

RIN 1018–AC57

Fish and Wildlife Service, General Provisions and General Permit Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Fish and Wildlife Service (Service) general permit procedures providing uniform rules, conditions, and procedures relating to the application, issuance, denial, suspension, revocation, and general administration of the Service permit program. This revision of the Service's general permit procedures is intended to more clearly explain the procedures for permit application and the criteria used by the Service in making issuance determinations. This revision provides regulations that establish qualitative eligibility factors and provides standards for the fair disqualification of inappropriate applicants. This revision also effects the Service criteria for suspension and revocation of permits and the procedures for appealing the denial, suspension, or revocation of permits. The processing fee rate for a permit application is also amended to provide for increased rates to recover a larger percentage of the costs of processing the permits and to provide for fee exemptions for several permit categories.

The Service is also revising its regulations prescribing its general procedures and its regulations implementing the Endangered Species Act of 1973 in order to revise certain Service addresses provided therein.

DATES: Comments must be submitted on November 6, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas Striegler, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, Department of Interior, Washington, D.C. 20240, Telephone Number (703) 358–1949 or Maggie Tieger, Chief, Branch of Permits, Office of the Management Authority, Telephone Number (703) 358–2104.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) has oversight responsibilities under Federal wildlife conservation statutory and regulatory authorities to provide uniform rules, conditions, and procedures for the application, issuance, denial, suspension, revocation, and general administration of the Service wildlife permit program. The Service in accordance with this responsibility is proposing the following changes to the general permit procedures of Part 13. Section 13.1, a general introductory section to the regulations of Part 13, describes in initial terms the requirements for making a permit application. This section has been revised, for it has been the source of some confusion to applicants, to explain when the Service will accept a single permit application to satisfy the separate permit requirements of

activities requiring more than one permit.

Several administrative changes have been made to § 13.3, entitled ''scope of regulations.'' This section outlines the general scope of Part 13 and provides an explanation of the term ''permit'' for regulatory purposes. This section has been revised to more clearly state the scope of its requirements. Specifically, the titles of several parts of the Code of Federal Regulations (CFR) in Title 50, that are referenced within this section, have been brought up to date. In addition the explanation provided for the term ''permit'' has been restated. The term ''permit,'' as the term is applied in Part 13, will not refer to ''a license, permit, or certificate as the context may require and to all such documents issued by the Service or other authorized United States or foreign government agencies.'' This change in § 13.3 was needed to correctly reference within this section the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The requirements of CITES are applicable, in this particular instance, because CITES requirements necessitate that all permits issued pursuant to Part 23 will automatically become void upon the expiration of their stated duration.

The permit application procedures of Part 13 are found in § § 13.11. Several changes have been made in these application procedures. The last sentence of the introductory paragraph of this section, which states that ''applicants do not have to submit a separate application for each permit unless otherwise required by this Subchapter,'' has been deleted, for it is redundant and has caused unnecessary confusion among applicants. The Service's provisions for the acceptance of a single permit application for multiple-permitted activities is now to be addressed within the revised § 13.1.

In § 13.11(b) the Service provides forwarding instructions for permit applications. The instructions in § 13.11(b)(2) and § 13.11(b)(3) are being revised, and a new forwarding instruction in § 13.11(b)(4) is added for endangered and threatened species incidental take permits and native endangered and threatened species take and interstate commerce permits. This change is being made in order to update the mailing addresses for permit applications. An equivalent change has been made to § 17.22(a)(1), § 17.22(b)(1), § 17.32(a)(1), § 17.32(b)(1), and § 17.72(a)(1) that sets forth the specific submission requirements for endangered and threatened species permits.

The time notice requirements for making an application are set forth in § 13.11(c). This section advises applicants of the time necessary for the processing of a permit. This section is being revised to advise applicants that the time required for the processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects and may require more than 90 calendar days. Permit applicants are also now informed that the time required for the processing of their permits may be increased by the procedural requirements of the National Environmental Policy Act (NEPA).

In implementing its responsibilities under the Endangered Species Act (ESA), CITES, Marine Mammal Protection Act (MMPA), Lacey Act, and Wild Bird Conservation Act (WBCA), the Service charges a user fee for the processing of permits and certificates. These permits and certificates authorize the holders to engage in certain wildlife-related activities, such as the import or export of fish, wildlife, or plants whose trade is regulated by treaty or by other laws of the United States. The general statutory authority to charge fees for permits and certificates is found in 31 U.S.C. 483(a), that provides that any Federal agency may charge fees for services including permits and certificates to make these services ''self-sustaining to the full extent possible.'' The authority to charge fees is also found under wildlife laws. Specifically, the ESA 16 U.S.C. § 1540(f), authorizes the Secretary to ''charge reasonable fees for expenses to the government connected with permits or certificates authorized by the Act including processing applications and reasonable inspection * * *.'' The MMPA, 16 U.S.C. § 1374(g), also provides that the ''Secretary shall establish, and charge a reasonable fee for permits'' issued pursuant to the Act.

The current schedule of fees was published in the **Federal Register** on July 15, 1982 (47 FR 30785). In accordance with fee policies in effect at the time of the publication of the notice, the total cost of processing each application was not expected to be fully borne by the applicant. The Service, therefore, set what was believed to be a reasonable fee for most permit applications to help defray processing costs.

A recent internal analysis of user fees revealed a need to increase import/export license and permit fees. This determination is supported by the fact that the Service has not increased fees since 1982 despite a 48.2 percent increase in the cost of living between August 1982 to August 1993, according to the index published by the Bureau of Labor Statistics. In Fiscal Year 1992 the cost to the Service for issuing 3,066 permits in the Office of Management Authority was approximately $1 million, excluding the costs associated with ESA Section 7 consultations, NEPA compliance activities, or regional review of permit applications. Revenues generated in user fees for the same year amounted to approximately $61,000, or 6 percent of expenditures.

The Service is therefore proposing to implement a new fee schedule, given the shortfall between program costs and fee collection and the fact that there has been no increase in fees for over 12 years. The Service proposes to increase the standard permit processing fee as set forth in a new table to be designated at § 13.11(d)(4)(i) from the $25 per application level to $50 per application. The Service also proposes to itemize nonstandard fees in a redesignated and revised table at § 13.11(d)(4)(ii) as follows: To increase the marine mammal permit fee to $250 for public display and scientific research permits; to increase the marine mammal registered tanner/agent permit fee to $75; to increase the ESA captive-bred wildlife registration fees to $175 for a 3-year period for new requests, and to $75 for a 3-year period for ESA captive-bred wildlife registration renewal and pheasant registrations; to increase the ESA import, take, and interstate commerce permit fee to $175; to increase the ESA export and foreign commerce permit fee to $100; to increase the CITES import permit fee to $150; to increase the CITES trophy import permit fee to $50; to increase CITES reissuance, pre-Convention certificate, captive-bred certificate, certificate for artificially propagated plants, and certificate of origin fees to $75; to increase the permit fee for CITES pet export/re-export to $35; to increase CITES export permit fee to $125; to increase the CITES Appendix II export permit fee for native American furbearers and alligators (excluding live) to $75; to increase CITES Appendix II and III re-export certificate fees to $125; to revise the import/export license fee from its current level to $55; to increase the injurious wildlife permit fee to $75; to increase the WBCA personal pets (import) permit fee to $50; to increase the WBCA permit fee to $150 for scientific research, zoological breeding or display, and cooperative breeding; to set the fee for approval of cooperative breeding programs to $200; to set the fee for approval of Foreign breeding facilities to $250/species; to waive the

Migratory Bird Treaty Act (MBTA), bird-banding/marking permit fee; to waive the MBTA special purpose-rehabilitation/educational permit fee; to set the fee for MBTA special purpose-depredation permits for private citizens (non-commercial) at $25; to waive the permit fee for bald and golden eagles; and to waive the permit fee for bald and golden eagle, Indian religious or ceremonial use. The ceremonial use. The Service is providing for these several permit fee exemptions or reductions in order to facilitate activities either regarded as beneficial to wildlife resources or to facilitate the exercise of religious freedom.

The difference in the rates in the above user fees reflects the level of complexity that the Service encounters in processing the various types of permits, based on the estimated costs to the Federal Government of providing these special services. The proposed fees are to be established at 30 percent of the calculated actual processing cost of each permit type. Fees for marine mammal permits, for example, are set at the rate of $250 since they are the most burdensome to process. These permit applications are often complex and require Service coordination with the National Marine Fisheries Service and the Marine Mammal Commission as well as publication of notices in the **Federal Register**. Permits to import marine mammals generally require a greater allocation of Service administrative and professional resources to process than a comparable CITES Appendix I permit and are significantly more complex to process than a pet permit application. These proposed fee increases are intended to proportionately reflect a percentage of the level of Service personnel resources and working hours required to process them rather than the entire actual cost for processing.

The Service's proposed new fee schedule is intended to recover a greater portion of the direct and indirect costs to the Federal Government of providing special services than is currently being recovered. The proposed fee schedule will also serve to more fully implement the Federal user fee policy that calls for cost recovery where special services provided by the Service impart a special benefit to an identifiable recipient.

In § 13.11(d)(3) the Service provides for a waiver of permit fees for certain governmental entities. This section provides that a fee will not be charged to any Federal, State, or local government agency, nor to any individual or institution under contract to such agency for the proposed activity. Fees have traditionally been waived or reduced for public institutions provided that proof of their status as a ''public institution'' accompanied the permit application. The Service is now proposing to limit the fee waiver provided for public institutions to only qualifying Federal and State governmental agencies and to individuals or institutions under contract to such agencies. The Service finds it necessary to limit this exemption at this time in order to more equitably recover a fair share of permit costs within a substantial sector of the Service's processing workload. The Service believes this change is reasonable since the affected institutions receive significant benefits from Service permits beyond those that accrue to the general public or to Federal or State governments.

Several other changes are made in the existing table of nonstandard fees in § 13.11(d)(4). These changes are intended to correct administrative errors in reference and to update this table in accordance with the previously proposed changes to the Service's import/export license fee rates (59 FR 47212). In addition, changes are also made in the table to indicate the exemption to the standard fee requirement to be provided for migratory bird special purpose rehabilitation and educational permits authorized under § 21.27; for American Indian religious or ceremonial use permits authorized under Part 21 and § 22.22; and for special purpose depredation permits for private individual non-commercial purposes that are authorized under § 21.27.

The Service's requirements for abandoned or incomplete applications are stated in § 13.11(e). This section has been revised to notify applicants that the Service may return substantially incomplete or improperly executed applications, and to further instruct applicants of the importance of providing complete and accurate information.

Applications for permits are required under § 13.12 to contain certain general information. Several changes are being made to the requirements of this section. Section 13.12(a)(4) is being revised to include the word ''export.'' This change is intended to inform applicants of the required documentation necessary for the exportation of wildlife. In addition to the general information requirements required on permit applications, certain additional applicant information is also required on permit applications in accordance with § 13.12(b). These additional requirements may be found by making reference to the specific type of permit within the table provided in § 13.12(b). Within this section several obsolete or redundant references to discontinued wildlife permit types are being deleted, and missing references to permit types are being added. These changes include: the deletion of the heading ''Marking of package or container;'' the deletion of references under the heading ''Marking of package or container'' that were made to ''Symbol marking'' permits; a correction in the position of a reference to the ''Import/export license'' from its present position under the heading ''Marking of package or container'' to its proper position under ''Importation at Nondesignated Ports;'' the addition of the heading ''Wild Bird Conservation Act Permits'' with a listing of the four types of available permits; the deletion of a reference made under the heading ''Threatened wildlife and plant permits'' that was made to ''American alligator-buyer or tanner'' permits; the addition of a reference under the heading ''Marine mammal permits'' of ''Registered agent or tanner;'' and the deletion of a reference under the heading ''Migratory bird permits'' that was made to ''Special aviculturist'' permits.

The terms and conditions under that the Service issues or refuses to issue a permit are indicated in § 13.21. This section is being updated to correct obsolete references to the ''Bureau'' and by inserting the abbreviated name the ''Service,'' to refer to the Fish and Wildlife Service.

Several additional changes are being made to the text of § 13.21. One important change is the addition of certain ''factors,'' to a new section to be designated § 13.21(a)(2), that will be considered by the Service when making a determination whether an individual applicant and/or permittee has failed to exercise responsibility. Such evaluations are to include consideration of one or more of the following factors: the competence, ability, skill, knowledge, training, and experience of the applicant and the suitability of facilities; whether there have been prior wildlife violations; whether there has been a failure to qualify or to fulfill any criteria or condition in law or regulation applicable to the permit; and whether there have been prior violations involving misrepresentation of material facts, falsified documents, false labeling or invoicing, failure to present documents or wildlife for examination or inspection, or other circumstances involving concealing, evading or circumventing detection of wildlife violations.

In certain instances a permit will not be issued, despite the proper execution of a wildlife permit application. This may arise when an applicant has failed to meet the applicable issuance conditions stipulated in § 13.21(b). Specifically, the issuance requirements stipulated in § 13.21(b)(3) are being revised to properly distinguish two distinct prerequisite conditions as independent and separate operative requirements. These stipulated requirements, as they presently read, are that the applicant has demonstrated a valid justification for a permit and that the applicant has made a showing of responsibility. A change is being made to separate these two requirements by amending § 13.21(b)(3) to allow non-issuance of a permit for failure to demonstrate a valid justification for a permit and by creating a new § 13.21(b)(8) to allow non-issuance of a permit for failing to demonstrate a showing of responsibility. The Service notes in making this change that there should be no automatic linkage: Where the satisfaction of one requirement or element could be interpreted to automatically meet the requirements of the second element; or between an applicant's showing of responsibility and the separate and logically independent requirement of an applicant being able to demonstrate a justification for a permit.

In addition to the above-mentioned changes, three new ''issuance criteria'' requirements have been added at § 13.21(b)(6), § 13.21(b)(7), and § 13.21(b)(9) respectively, to require the applicant to fulfill all applicable requirements necessary for the filing of a complete application prior to the Director's or Regional Director's issuance of the appropriate permit, to require the applicant to have complied with the conditions of previously held permits, and to provide for non-issuance where the applicant has conducted the activity prior to the issuance of the permit required by Subchapter B. This correction was considered necessary in order to further explain the criteria that the Director or Regional Director must consider before reviewing and issuing a permit.

The requirements of § 13.21(b) list certain factors that will disqualify a person from obtaining a permit. A disqualification, under this section, is to be instituted when an applicant has been determined, under certain specified criteria, to have been in violation of certain listed wildlife laws.

A change to the scope of the factors is being made in § 13.21(c) by the inclusion of additional ''disqualifying factors.'' This section has been reorganized as follows. First, the existing disqualification factor in § 13.21(c)(1) for a conviction or entry of a plea of guilty or nolo contendere for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act that disqualifies a person from receiving or exercising the privileges of a permit is being amended to encompass all criminal violations of these Acts, to establish a 5-year duration of disqualification, and to include within this regulation equivalent violations of the ESA, CITES, Airborne Hunting Act, the MMPA, the WBCA, and the African Elephant Conservation Act. This disqualification factor is being redesignated to appear as § 13.21(c)(1)(i). Second, an additional factor is being added at a newly designated § 13.21(c)(1)(ii) to include as a basis for disqualification an assessment of one or more civil penalties for a violation(s) of the Lacey Act, the Eagle Act, the ESA, CITES, Airborne Hunting Act, MMPA, the WBCA, or the African Elephant Conservation Act, where such assessment(s) evidence a lack of responsibility in accordance with § 13.21(a)(2). Third, changes are being made within § 13.21(c)(2) to disqualify an applicant from receiving or exercising the privilege of a permit for a period of 5 years where an individual has had a similar permit previously revoked for reasons found in §§ 13.28 (a)(1), (a)(2), or (a)(3). The effect of this change is to include as a basis for a permit disqualification any prior revocation received pursuant to these three sections. These changes are intended to include as a basis for disqualification other kinds of wildlife violation(s) and to fairly equate comparable levels of violation(s) to allow disqualification in certain instances where violation(s) clearly evidence a lack of responsibility. Changes to the scope of revocation actions encompassed under these three sections will be covered later in the preamble discussion of changes to permit revocations in § 13.28.

The conditions of issuance and acceptance of a permit are set forth in § 13.21(e). The provisions of § 13.21(e)(2) are intended to inform applicants of their responsibilities as holders of Fish and Wildlife Service permits, and that by accepting or holding a permit the applicant acknowledges the necessity for close regulation and monitoring of the activity permitted. It is further explained within this provision that by the act of acceptance of a permit the permittee consents to and will allow the entry by agents or employees of the Service, or other authorized State Government official upon the premises where the permitted activity is conducted at any ''reasonable hour''. This paragraph is being revised by the addition of the words ''as established or evidenced by actual operation or by the normal hours of operation for similar types of business, trade or operations.'' This change is made to clearly delineate what is meant by the use of the operative term ''reasonable hour''. In addition, this section is also being revised to allow Service agents or employees or other authorized State governmental officials to audit or copy any books, records, or permits required to be kept in accordance with Subchapter B.

The requirements for a denial of a permit application are set out in § 13.21(g). Under the terms of § 13.21(g), ''Denial'', an issuing/reviewing office may deny a permit to any applicant who fails to meet the applicable Service issuance criteria. This section is being revised to provide that the issuing/reviewing office will provide the applicant with a written explanation stating the basis for a permit denial. Although the Service has generally provided such explanations as a matter of policy in the past, this change is being made to require such notification by regulation.

Section 13.21(g) is also amended by the inclusion of the requirement that, ''except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process.'' This change is intended to establish a fair and effective duration for a Service permit denial and to place the burden upon the previously denied applicant to correct conditions prior to any resubmission of their application.

The Service's requirements for renewal of permits are established in § 13.22. Section 13.22 sets forth in detail the procedure to be used by applicants for the renewal of existing permits. Changes made within this section include the addition of a new introductory text to the section stating that ''generally a permit issued under this Subchapter B may be renewed, provided the activity authorized thereunder has not been completed.'' This change is being made to explain to applicants the permits are issued for a particular or discrete permitted activity or act and that such permits will only be renewed when the particular permitted individual activity or act has not been completed. This section was intended to enable the permittee to fully

complete a single permitted activity and was never intended to authorize an additional or successive activity or act of the same kind.

Other changes made in this section were made to remind the applicant of the basic requirement that all applications must be completely filled out prior to the initiation of processing of a renewal. An additional change made in this section was the inclusion of a provision to read ''Any renewal application information remaining unchanged for a period of more than 4 years may be regarded as outdated, and the applicant required to provide new and complete application information upon request.'' This change was necessary to ensure that all information contained within permit application files is current and updated on a regular basis.

Section 13.22 has also caused some confusion among applicants concerning the special requirements of CITES. Section 13.22(c) is being amended to clarify the provision allowing continuation of a permitted activity while a permit renewal is pending. As currently written, the permit must be valid and renewable to continue the activity; as proposed, the permit also must not have been suspended or revoked. In addition, the proposal reflects that continuation does not apply to permits issued under CITES, as CITES permits are void upon expiration. Another change made was in § 13.22(d) to require a written explanation for any denial of a permit renewal. The Service has routinely provided such explanations and is amending the regulations to provide such notice by regulation.

The Service's provisions for the amendment of permits are established in § 13.23. This section sets forth the procedures to be used by applicants in modifying the conditions of a permit. This section is being revised to replace the word ''his'' with the words ''his/her'' in § 13.23(a) to make this reference gender neutral.

The procedures for the change of name or address of a permittee are set forth in § 13.23(c). Under the requirements of this section, a permittee is required to notify the issuing office within 10 calendar days of a change of name or address. This section is being revised by the addition of a provision informing the permittee that a failure to notify the office that issued the permit of a change of address may result in the cancellation of a permit. This situation arises in cases where reasonable efforts to contact the permittee by certified or registered mail have failed. A canceled permit may be reinstated if the permittee subsequently contacts the issuing office within 90 calendar days of the date of cancellation.

A new section has been established at § 13.23(d) to explain that the issuing/reviewing office may deny amendments of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21, or in the sections specifically governing the activities for that the amendment has been requested.

The Service's criteria and procedures for suspension, revocation, and review are established in § 13.27, § 13.28, and § 13.29, respectively. Sections § 13.27 and § 13.28 are being corrected to conform with the provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*). In accordance with the requirements of the APA these sections will not be prefaced by a sentence stating ''the following criteria will apply, except: pursuant to a court order; or in cases of willfulness; or in cases in which the public health, interest, or safety requires otherwise . . . .'' This change is intended to inform applicants that permits issued by the Service may be immediately suspended or revoked pursuant to: a sentence or order of a court; or in cases where the permittee has intended by act or omission to willfully, intentionally, knowingly, or voluntarily violate applicable law; or where the public health, interest, or safety requires.

The Service's criteria and procedures for permit suspension are stated in § 13.27. These procedures are applicable when the Service has determined it necessary and proper to take the appropriate action of suspending a permit. The procedural steps within the Service's administrative remedies, in cases of permit suspension, have been amended to conform with those now made available in cases of permit revocations pursuant to § 13.28(b). This change is intended to equate the administrative remedies available in cases of permit suspensions with those of permit revocations and to eliminate repetitive procedures.

In addition to these changes, the last sentence of § 13.27(a) is being deleted for it has resulted in a permit suspension remaining in effect for an indefinite period of time or in the existing language of the regulation ''until the permittee had corrected deficiencies.'' This change was necessary because the terms of this provision are not in agreement with the provisions of § 13.28(a)(2), that allow a permittee 60 days to correct any deficiencies that resulted in a suspension or face possible revocation of the permit.

Several small changes are being made in the procedures for suspension in § 13.27(b). Pursuant to § 13.27(b)(2) a permittee, upon receipt of a notice of proposed suspension, may file a written objection to the proposed suspension action. The procedural specifications for this objection have been amended. This change is accomplished by the insertion of the word ''postmarked'' to replace the deleted word ''filed.'' A provision regarding the requirements for making a written objection is also added to read as follows: ''Such objection must be in writing, must be postmarked within 45 calendar days of the date of the notice of proposal, must state the reason why the permittee objects to the proposed suspension, and may include supporting documentation and any new information.''

An additional change to the permit suspension procedures was made in § 13.27(b)(3) to read: ''A decision on the suspension will be made within 45 calendar days after the receipt of the objection, or the end of the objection period if the permittee does not respond within the objection period, unless extended for good cause and the permittee is notified of the extension. In the event of an adverse decision, the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons thereof. The issuing/reviewing office will also provide the applicant with information concerning the right to appeal and the procedures thereof. The Service is making this change to standardize available administrative remedies within Part 13 in an effort to minimize the delays caused by overly repetitious procedures.

Changes have been made to the procedures for permit revocation in § 13.28. The Service's procedures for revocation will not be divided, according to applicability, into two procedurally distinct and independent categories of revocation action. These actions can be categorized as: first, revocation procedures that will apply in ordinary or usual ''revocation'' actions; and second, special revocation procedures that will apply only to revocation of a suspended permit when the permittee fails to correct deficiencies that were the cause of the permit suspension within the required period of time.

The first type of revocation action is established in the present § 13.28(b). This section has been otherwise revised with changes being made to several procedural steps and by the substitution of the word ''appeal'' for the word ''reconsideration.'' This change will replace the redundant step of having a

permittee make a request for reconsideration upon receiving notice of a Service decision on the revocation. A step that in sequence followed the permittees prior right to make a written objection upon receipt of a notice of proposed revocation. This change is intended to eliminate the overly repetitious re-review of the permit revocation by the initial revoking office. The regulations will now replace this administrative step with the more consequential administrative step of providing the permittee with the right of immediately appealing an adverse decision to the appropriate Director or Regional Director in accordance with § 13.29(e). These changes were also necessary to provide comparable procedural uniformity between the permit revocation procedures of this section and the procedures to be established for suspension as stated in § 13.27.

In the newly proposed second type of revocation action, the Service will seek revocation in instances where there are valid grounds for revocation of a suspended permit for failure to correct deficiencies in accordance with § 13.28(a)(3). The procedures for this type of revocation action are to be set forth in § 13.28(c). These new procedures are intended to provide finality or closure to the availability of administrative procedures in instances where a suspended permittee has failed within the required period of time to correct deficiencies that resulted in the suspension of their permit. In such cases the suspended permittee who is effectively in violation of their suspension for failing to act in good faith, will be barred from availing themselves of further Service procedures and will therefore, be compelled to seek any redress through non-administrative means. This change is intended to demonstrate the importance of full compliance with all suspension orders and the necessary consequences for failing to exercise good faith. The Service believes that this change is necessary, fair, and equitable in light of the seriousness of a failure to abide by the terms of a suspension order.

The Service is also amending and reorganizing § 13.28(a), which provides the applicable criteria for permit revocations. The existing criteria in § 13.28(a)(1) provides that a permit may be revoked when ''the permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity.'' The Service is amending the scope of § 13.28(a)(1) to provide for revocation for violation of any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country that involves a violation of the conditions of the permit or the laws or regulations governing the permitted activity and which results in a felony conviction, or entry of a plea of guilty or nolo contendre.

In order to present all applicable revocation criteria in logical sequence the Service proposes to redesignate the existing §§ 13.28 (a)(2), (a)(3), (a)(4), and (a)(5) to become §§ 13.28 (a)(3), (a)(4), (a)(5), and (a)(6) respectively, and to insert additional criteria for permit revocation in new § 13.28(a)(2) and § 13.28(a)(7). The new permit revocation criteria at § 13.28(a)(2) will provide that a permit may be revoked when ''the permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the laws or regulations governing the permitted activity resulting in a conviction, entry of a plea of guilty or nolo contendere for any misdemeanor violation, or the assessment of a penalty for a civil violation if such assessment(s) or conviction(s) evidences a lack of responsibility.''

In Sections 13.28 (a)(7), (a)(8), (a)(9), and (a)(10) the Service would add four additional criteria for permit revocation. The new criteria at § 13.28(a)(7) would read as follows: ''It is determined that the permittee failed to disclose material information required or made false statements as to any material fact in connection with his application or the conduct of activities under his or her permit.'' This change is intended to inform the applicant of the necessity of making a full and accurate permit application and the consequences of their failing to do so. The new criteria at § 13.28(a)(8) would read as follows: ''Evidence showing failure to exercise responsibility in accordance with § 13.21(a)(2).'' This change is intended to provide for revocations in situations where the permittee has clearly evidenced a failure to exercise responsibility. The new criteria to be set forth at § 13.28(a)(9) would read as follows: ''The Director or Regional Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.'' This change will allow the Service to revoke permits when conditions, that would have disqualified the permittee at the time of application, are discovered after a permit has been issued. The new criteria to be set forth at § 13.28(a)(10) would read as follows: ''the applicant has failed to fulfill the applicable requirements of Subchapter B.'' This change would allow the Service to revoke permits upon a finding that the permittee is not in compliance with the required conditions for holding a permit.

An additional change to the permit revocation procedures in § 13.28(b)(3) would read: ''A decision on the suspension will be made within 45 calendar days after the receipt of the objection or the end of the objection period, whichever is applicable, unless extended for good cause and the permittee is notified of the extension. In the event of an adverse decision on the permittee's written objection, revoking the permit, the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons therefore, together with the information concerning the right to appeal the decision under § 13.29(e) of this part, and the procedures for appeal.'' The Service proposes this change to standardize available administrative remedies within Part 13 in an effort to minimize the delays caused by overly repetitious procedures.

An important change proposed to § 13.28(d) is the addition of a special reference table to be entitled ''Time allocated for administrative procedures.'' The Service is proposing this section to assist permittees in complying with the time restrictions provided for the availability of suspension, revocation and other review procedures.

In revising the review procedures in section 13.29, the Service has attempted to eliminate certain redundancy with the suspension, revocation, and the procedures for the appeal of a permit denial. To accomplish this change, the Service is proposing to make two procedural changes: first, to provide the permittee whose permit has been revoked or suspended with the immediate right to directly appeal to the Director or Regional Director in lieu of a repetitious request for reconsideration before the same issuing/reviewing office who initiated the revocation or suspension action; and second, to allow the Service to proceed in an orderly fashion from permit suspension to permit revocation in situations where a permittee has failed within the required period of time to remedy the deficiencies that caused the suspension. These changes are necessary because the procedures as currently written are overly repetitious and delaying to

permittees seeking redress. The review procedures as written have also inappropriately allowed applicants falling under § 13.29(a) (1), (2), and (3) to request a reconsideration of proposed suspension or revocation actions, even when there was no lawful authority to issue a permit. The Service believes that a request for reconsideration of suspensions or revocations is unnecessarily repetitive in such instances, especially in light of the applicant's existing available procedural remedies of objecting to any suspension or revocation action in accordance with § 13.27(b)(2) and § 13.28(b)(2), respectively, and challenging any adverse answer to such action with a timely appeal.

Other changes have been proposed in the text of § 13.29. These include: the clarification of the requirements for the submission of certification in § 13.29(b)(4); administrative changes in § 13.29(d); and the inclusion of certain exceptions to this section in § 13.29(a) and § 13.29(e). Several additional changes are being made to the provisions of § 13.29(f), which would be re-numbered and administratively revised. Section 13.29(f)(1) would be amended to read ''the Director or the Regional Director may designate any staff member(s) to assist in analyzing the issues and may include the recommendations of the issuing/reviewing office.'' This change is intended to clarify the respective role of the issuing/reviewing office in providing assistance and recommendations to the Director or Regional Director considering an appeal.

The Service, in an effort to simplify its regulations, is adding a reference section in a new section to be designated § 13.30. The intent of this section is to provide the user with a reference to clearly illustrate: the exercise of responsibility determinations; the effects of disqualification; procedures for denial; the procedures for permit amendment(s) initiated by the Service; the procedures for suspension of a permit; the general procedures for revocation of a permit; the special procedures for revocation of a suspended permit, where the applicant has failed to correct deficiencies that were the cause of a suspension; and the effects of a prior revocation on subsequent permits.

Section 13.41 sets forth the requirement that wildlife possessed in accordance with permit conditions must be maintained under humane and healthful conditions. This section would be revised to read ''any live wildlife or plants possessed, held, transported, and/or imported under a permit must be maintained under humane and healthful conditions.'' This change is intended to insure that all wildlife and plants under a Service permit are adequately maintained under applicable regulations.

The Service requirements regarding the maintenance of records is stated in § 13.46. This section would be revised to require that such records now include information on the specifics of any death or escape of permitted wildlife. In addition such records will now be required ''to include names and addresses of persons by or with whom any plant (to include seeds) or wildlife has been purchased, sold, bartered, or otherwise transferred . . . .'' This change is intended to include the seeds of plants that are regulated by permit with applicable record keeping requirements.

In § 13.47 the Service sets out the inspection requirements applicable to any person holding a permit pursuant to Part 13. This section would be revised by the addition of the words ''as established or evidenced by actual operation, or normal or expected hours of operation for the type of similar type of business, trade, operation or activity.'' This change is made in order to more clearly delineate what is meant by the use of the operative term ''reasonable hour.'' The equivalent provision in Section § 13.21(e)(2) would also be similarly revised.

In addition to the changes being made in Part 13, the Service would revise Part 10 to add a necessary reference to the appropriate Regional Office addresses and to also update the existing list of Division of Law Enforcement, Regional Office addresses provided in § 10.22. The Service would also update the mailing address in § 17.22, 17.32, 17.62, and 17.72 as noted earlier, for the submission of applications for permits for Native Endangered and Threatened Species Take, Interstate Commerce, and Incidental Taking permits. Finally, the Service is considering additional regulatory provisions for the identification of trade secrets or confidential business information (CBI) contained in permit applications. The Service invites additional comments on how it may consider the views of applicants as to the protection and identification of such information, when requested under the Freedom of Information Act.

Background

On Thursday, November 14, 1991, the Service published in the **Federal Register** (56 FR 57873) a Notice of Intent to Review 50 CFR Part 13. The Service, in this notice, requested that all interested parties submit written comments. In response to this request, the Service received comments from a total of 66 individuals and organizations.

Specifically, written comments were received from 36 individuals, 11 government agencies, 8 sportsman associations, 1 American Indian tribe, 3 scientific associations, and 7 wildlife management and conservation associations. Only 10 of the comments received pertained to Part 13. The Service has carefully considered all comments received in response to the Notice in proposing these changes to Part 10, 13, and 14.

Summary of Comments and Information Received

Comments Pertaining to 50 CFR Section 13.3

Scope of Regulations

Several commenters noted that the term ''permit'' should also include foreign documents such as export permits, commodity clearances, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permits, and certificates of origin. One commenter noted that currently the Service has no real regulations that pertain to the specific requirements of foreign permits. The Service finds considerable merit in these comments and is proposing to amend this section accordingly to encompass such permits.

Comments Pertaining to 50 CFR Section 13.11 and 13.12

Application Procedures, General Information Requirements on Permits

A few comments were received on 50 CFR § 13.11. One commenter representing a scientific association suggested, in regards to § 13.11(a), that a letter describing a researcher's activities be allowed instead of the present requirement of filling out a Service permit application form. In issuing/reviewing permits and applications, the Service needs to quickly ascertain a permittee's or applicant's status or eligibility. To best accomplish this task, a uniform permit application has been routinely used. The Service believes that a continuation of the use of this standard form is the best and most efficacious method of processing applications and ensuring all required information has been provided.

Several comments from scientific and wildlife associations requested a review of 50 CFR § 13.11(b)(2). This section references the designated port of entry requirement of Part 14. One commenter

suggested that the Service's regulations should include an exception to designated port of entry requirements for scientific specimens and raptors used in the practice of falconry. The Service finds insufficient merit in the suggested exemptions for scientific specimens and of falconry birds from the designated port requirements. The Service has strived in its administration of permits under Part 13 to treat all permit applicants fairly and uniformly without regard to the status of the permittee. Procedurally, the requirements of § 13.11(b)(2) are intended to identify the appropriate issuing/reviewing office for a permit. This section was not intended as a list of exceptions to other regulations.

One commenter noted that delays in the issuance of permits caused by the time notice requirements in 50 CFR § 13.11(c) has imposed a hardship upon permit applicants. Other commenters also expressed similar concerns about perceived delays in the permit review process. The Service is concerned about any delays encountered in its permit programs. The permit process, however, is a deliberative process and therefore, requires careful, individual analysis and review by the Service. Importers of scientific specimens, captive-bred raptors, and wildlife importers in general should take this consideration into account and plan ahead for their importation and or exportation needs.

One comment on § 13.12, the general information requirements of permit applications, requested that a timely notification be given to all applicants with incomplete permit applications. The commenter further noted that such notice would serve to prevent the penalization of the applicant for relatively inconsequential or unintended omissions. It is the considered opinion of the Service that such additional ''formal'' procedures are not warranted at this time. The Service is not convinced that such additional procedures would result in any consequential saving in time. The Service, however, will continue to notify the applicant informally in all such cases.

Comments Pertaining to 50 CFR Section 13.21

Issuance of Permits, Denials

One commenter suggested that under certain limited circumstances, verbal authorization to undertake a permitted scientific project should be allowed. The commenter further qualified this suggestion, however, by noting that applicants should not have to bear legal liability when misleading oral representations are given within such verbal authorizations. The Service believes that such verbal authorizations would be ill advised for the same vagueness and accountability problems noted by the commenter.

One commenter questioned the qualifications of persons making a determination as to the relative validity of a permit justification under § 13.21(b)(3). This section generally conditions the issuance of a permit by the Director or Regional Director to the applicant's demonstration of a valid justification for a permit and an independent showing of responsibility. Service permit applications are reviewed in an ordered and sequential process whereby permits are examined by qualified Service staff working under direct guidance and supervision of Service managers. Permit issuance decisions are reviewed for consistency with established permit policy. Applicants who are dissatisfied with the justifications given for any Service permit decision may readily seek recourse and remedy through available Service administrative procedures.

One commenter suggested deleting the first sentence of § 13.21(e)(2) for, as the commenter stated, ''the first sentence implies a mistrust * * * of the permittee.'' In response to this comment, the Service can only state that no such implication of mistrust is intended. The intent of this requirement is to clearly set forth the responsibility of the permittee to allow for compliance inspections of permitted activities by the Service. Such inspection requirements are essential for the exercise of due diligence in the preservation of fish and wildlife resources.

One commenter noted that the officer should be required to provide applicants with a written indication of the reasons for any denial of a permit or the non-renewal of a permit under §§ 13.21(g) and 13.22(d) respectively. The Service appreciates the concerns of the commenter and is proposing to change the regulations to include a provision in § 13.21(g) and § 13.22(d), to be similar to those provided in § 13.27(b)(3) and § 13.28(b)(3), to read as follows: ''the issuing/reviewing office will notify the permittee in writing of the Service's decision for denial or non-renewal of the permit.'' Generally, the Service has provided the basis of its decisions to applicants in the past as a matter of policy. This notice would now be required by regulation.

Comments pertaining to 50 CFR Section 13.28

Permit Revocation

One commenter noted that the criteria for permit revocation should also include the complete civil and criminal prior violation history of the permittee. The commenter further noted that whether a felony violation is willful, as stated in § 13.28(a)(1), should not be the only consideration in permit revocations. The commenter noted that many repeat offenders assert their violations are a result of ignorance of the regulations although, as the commenter elaborated, these are the same regulations to which the violators have affirmed knowledge when they sign their permit application. The Service finds considerable merit in the commenter's suggestion. The Service in its revocation procedures has attempted to strike a balance in favor of fairness. The revocation of an individual's permit is a punitive measure of final resort that rightfully demands that the Service provide sufficient justification for its permit revocation determinations and provides the applicant with a fair process. The present criterion in § 13.28(a)(1) require the proof of the causal element of ''willfulness'' in the commission of certain listed felonies. This element has presented the Service with an extremely difficult legal burden of proof in permit revocation actions. This burden of proof has tended to limit the effectiveness of revocation as a deterrent. The Service, in an effort to construct a greater deterrent, is proposing to amend the regulations to allow for additional criteria for permit revocation. These additional criteria would be set forth in a new § 13.28(a)(2) that would provide that a permit may be revoked when ''the permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the laws or regulations governing the permitted activity resulting in a conviction, or entry of a plea of guilty or nolo contendere for any misdemeanor violation, or the assessment of a penalty for a civil violation if such assessment or conviction evidences a lack of responsibility.''

Comments pertaining to 50 CFR Section 13.29

Review Procedures

One commenter recommended the amendment of 50 CFR § 13.29(f) by the addition of the following suggested

language ''The applicant will be provided in writing all presentations, whether oral or written, made by the issuing/reviewing office, or other Service divisions or employees, to higher authority regarding the merits of the appeal, which presentations shall be included in the appeal record. The deciding officer will state in the decision the date and contents of any discretionary policy adopted by the Service and applied in that matter, and state the facts justifying why that policy applies and should be adopted or applied in that appeal.'' The Service finds this proposal to be impractical and undesirable. The term ''discretionary policy'' is ambiguous and an inaccurate representation. Where an appeal is successful, the applicant will receive their permit and the record will substantiate why the issuing/reviewing office's decision has been reversed. Where an appeal is rejected, the applicant will receive notice providing the basis for that determination.

Comments pertaining to 50 CFR § 13.42

Permits are Specific

One commenter noted that scientific collecting permits should be written in such a way as to allow for scientific opportunism. The rationale for this suggestion, as noted by the commenter, is that scientists cannot always predict the particular species they will find or what species they will find useful for research purposes. The commenter further noted that this problem is of special concern when invertebrate and plant species are involved. The Service is sympathetic to the concerns expressed herein and otherwise by the scientific community. The Service continues to recognize the essential need to facilitate the study of science. The Service, however, must carefully weigh these concerns pursuant to its mandate to carefully monitor the collection of scientific wildlife specimens. The Service is hesitant to issue scientific collecting permits without sufficient species specificity. Therefore, the Service does not anticipate making any changes in the regulations pertaining to scientific collecting permits at the present time. The applicant should always have an idea of what their intended target species will be. Where the collection of additional species is anticipated, the applicant is simply required to add them to the list of those species in the application justification.

One representative of an association of scientists suggested several changes to the regulation involving special permit provisions for scientists. One request was for the Service to provide for ''temporary verbal authorization'' to be given while a research application is being processed. Another commenter suggested that permit application information be only required for what was termed ''a randomly sampled subset of applicants, with clearly defined research objectives.'' The commenter also suggested that application fees should be waived for scientific or educational institutions and, that under certain limited circumstances, verbal permit authorization to undertake a permitted scientific project or the modification thereof be provided. The Service is cognizant of the special requirements of scientist and researchers; however, the Service is hesitant at this time to provide for such special permit procedures in the absence of adequate safeguards. In regard to the issue of fees, the cost incurred by the Service in processing permits is substantial and should not be dependent upon the status, purpose, or funding source of the recipient.

Other comments to Part 13 included the recommendation that there be greater national uniformity in the Service's interpretation and enforcement of regulations. Specific recommendations addressed: the need for uniformity in the issuance of permits; the need to establish uniform renewal, non-renewal, and revocation criteria; and the recommendation that the permit process be simplified, expedited, and administered through a centralized permit process rather than the current regional system.

In this review of Part 13, the Service is attempting to update the regulatory provisions that provide uniform procedures applicable to the permit process. The Service in its general permit procedures has attempted to achieve a desirable level of specificity in its regulations and uniformity in the issuance of permits throughout the seven Regional Offices. There is, however, a limit to the degree of specificity and centralization that can be achieved by the Service without making the regulations and the permit issuance process more complex and extensive than necessary. The Service has made an effort in the past to decentralize the permit process to make it more responsive to users and efficient in operation. The process was once centralized in the Washington office of the Division of Law Enforcement. This was found to be unsatisfactory as the Service was unable to make accurate judgments about applications that were specific to diverse regional conditions. In addition the Service's ability to take an adverse action when necessary was also limited, depending on the type of permit involved, by its ability to ascertain the specific facts and circumstances involved in each case. The variables relating to the issuance of the permit are often unique to the locale and situation. The Service's responsibilities for the permit process require its careful evaluation of all the facts, circumstances and local conditions related to a permit's issuance. In order for the Service to be fair to everyone, it can only provide the basic procedural guidelines for taking those adverse actions. It is not in the best interest of the permittees or the Service to impose the unique variables of one situation to every case.

Several additional comments were received on Part 13; these include a recommendation that changes be made to permit procedures that affect museum and scientific specimens. One commenter suggested that permit requirements are too complicated, especially in such instances where scientific specimens or materials on loan to parties outside the United States are returned. The Service is concerned about any delays encountered by applicants and permittees in its permit functions. The Service, however, must process the requests of all members of the public fairly and equitably without regard to their individual status on a first in, first out basis.

One commenter noted that the Service should determine whether the provisions of § 13.41 regarding the humane conditions for wildlife possessed under a permit are adequate to cover conditions of falconry birds. This, in the commenter's opinion, would be particularly true in the event the facilities standards of § 21.21 are removed or changed. The Service in § 21.29 and § 21.30 has established standard criteria for falconers and raptor propagators. These include the requirements for falconry facilities. Any requirements beyond these are imposed by the respective individual states.

Another commenter suggested that the Service's requirements for alteration of a permit in § 13.43 should allow the ''reasonable'' copying of permits for use as records and for other limited purposes. The Service, in reply to the above comment, is justifiably concerned about the integrity of its permit system. Any proliferation of copies would tend to undermine the system and lead to increased doubt as to the authenticity of permits. Therefore, to continue to safeguard the permit system the ban on the copying of permits, except where specifically permitted on the face of the permit, will remain in effect.

One commenter noted that the requirements for the maintenance of records in § 13.46 were too burdensome on permittees. The Service fully realizes that there is some burden imposed upon the permittee by the requirement of § 13.46 to maintain records. The Service, however, believes that this burden is at a minimum level and reasonably necessary for the maintenance of a sound permit program and to preserve wildlife resources. Finally, a few commenters requested the Service define the terms ''reasonable hour'' and ''sale.'' The term, ''reasonable hour'' as it is used in § 13.47 invokes a reasonable standard of interpretation and is given its common meaning in light of the facts and circumstances of each case. The Service has carefully considered the suggestion to provide greater clarification to this term and proposes making changes in the language of this and the equivalent section in § 13.21(e)(2) accordingly. The term ''sale'' includes offers, or possess for sale, barter, exchange, or trade. The Service invites further comment on the merits of the addition of such a definition.

Need for Proposed Rulemaking

The Fish and Wildlife Service (Service) is updating the general permit procedures. In addition the Service is correcting errors in the amended uniform rules and procedures for the application, issuance, denial, suspension, revocation, and general administration of permits issued pursuant to 50 CFR Part 13. Definitions have been added and several errors and missing references have been corrected. Changes were necessary in several sections for the purposes of eliminating ambiguities and to more clearly articulate procedural requirements, to circumscribe applicable exceptions to requirements, and to provide for greater clarity.

Changes in the Service permit user fee policies and rates were made in order to more fully recover the cost of maintaining the permit system. The Service is revising its overall user fee policies and rates and is attempting in general to recover a fair or more reasonable proportion of the cost of special services provided to individuals and businesses. The demands of providing such special services have required a proportionately greater allocation of Service resources than the services provided to the public at large. Federal guidelines indicate that the entire cost of providing such special services should be realized by the recipient, the Service at this time is simply attempting to recover a larger portion of permit issuance costs through more realistic user fees.

The Service is also amending 50 CFR Part 10 and 50 CFR Part 17. The Service is making limited changes to these parts to correct addresses provided therein.

Required Determinations

This rule was not subject to review by the Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior (Department) has determined that this proposed rule 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.* Small entities are presently required to comply with the current regulations. This revision will have a beneficial effect upon small entities by simplifying general permit procedures. This action is not expected to have significant ''taking'' implications, as per Executive Order 12630. This proposed rule does not contain any additional information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Department has certified to OMB that these proposed regulations meet the applicable standards provided in Section 2(a) and 2(b)(2) of Executive Order 12778. This action does not contain any federalism impacts as described in Executive Order 12612. These proposed changes in the regulations in Parts 10, 13, and 17 are regulatory and enforcement actions that are covered by a categorical exclusion from National Environmental Policy Act procedures under Section 516 of the Department Manual and an Environmental Action Memorandum is on file at the Service's office in Arlington, Virginia. A determination has been made pursuant to Section 7 of the Endangered Species Act that the revision of Part 14 will not affect federally listed species.

Author

The originator of this proposed rule is Law Enforcement Specialist Paul McGowan working in cooperation with the staff of the Division of Law Enforcement and the Office of Management Authority, Fish and Wildlife Service, Washington, D.C.

List of Subjects

50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B of the Code of Federal Regulations, is proposed to be amended as set forth below:

1. The authority citation for Part 10 is revised to read as follows:

Authority: 16 U.S.C. 668a–d, 703–712, 742a–742j–1, 1361–1384, 1401–1407, 1531–1543, 3371–3378; 18 U.S.C. 42; 19 U.S.C. 1202.

Subpart C—Addresses [Amended]

2. Section 10.22 is revised to read as follows:

§ 10.22 Regional and law enforcement offices.

Service Regional and Law Enforcement offices and their areas of responsibility follow:

(a) Mail forwarded for the attention of the Regional Director for the U.S. Fish and Wildlife Service should be addressed: Regional Director, Attention: Endangered/Threatened Species Permits (see appropriate address in the table in paragraph (b) of this section);

(b) Mail forwarded for the attention of the Division of Law Enforcement should be addressed: Assistant Regional Director, Division of Law Enforcement, (see appropriate address in the following table):

TABLE—AREAS OF RESPONSIBILITY AND OFFICE ADDRESSES

Jurisdiction	Regional directors	Assistant regional directors for law enforcement
Region 1: California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, the Marshall Islands, Northern Mariana Islands, and the Trust Territory of the Pacific Islands.	U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, OR 97232–4181, Telephone: (503) 231–6241.	U.S. Fish and Wildlife Service, Law Enforcement, 911 N.E. 11th Avenue, Portland, OR 97232–4181, Telephone: (503) 231–6125.
Region 2: Arizona, New Mexico, Oklahoma, and Texas.	U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103, Telephone: (505) 766–3972.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 329, Albuquerque, NM 87102, Telephone: (505) 766–2091.
Region 3: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, Fort Snelling, MN 55111–4056, Telephone: (612) 725–3583.	U.S. Fish and Wildlife Service, Law Enforcement, Bishop Henry Whipple Federal Building, Fort Snelling, MN 55111–4056, Telephone: (612) 725–3530.
Region 4: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands.	U.S. Fish and Wildlife Service, 1875 Century Center Blvd., Suite 200, Atlanta, GA 30345, Telephone: (404) 679–7088.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 49226, Atlanta, GA 30303, Telephone: (404) 331–5872.
Region 5: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035, Telephone: (413) 253–8627.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 779, Hadley, MA 01035–0779, Telephone: (413) 253–8274.
Region 6: Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Suite 550, Denver, CO 80225, Telephone: (303) 236–7920.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 25486–DFC, Denver, CO 80225, Telephone: (303) 236–5270.
Region 7: Alaska	U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, Telephone: (907) 786–3542.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 92597, Anchorage, AK 99509–2597, Telephone: (907) 786–3311.
Region 9: Any foreign country (Washington Office).	U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, VA 22203, Telephone: (703) 358–2104 or 1–(800) 358–2104.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 3247, Arlington, VA 22203–3247, Telephone: (703) 358–1949.

50 CFR Part 13 [Amended].

3. The authority citation for Part 13 is revised to read as follows:

Authority: 16 U.S.C. 668a; 704, 712; 742j–1; 1374(g); 1382; 1538(d); 1539, 1540(f); 3374; 4901–1916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 483(a), 9701; E.O. 11911, 41 FR 15683.

4. Section 13.1 is revised to read as follows:

§ 13.1 General.

Each person intending to engage in an activity for which a permit is required by this subchapter B will, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by this subchapter must make application for such permit in accordance with the requirements of this part 13 and the other regulations in this subchapter that set forth the additional requirements for the specific permits desired. If the activity for which a permit is sought is covered by the requirements of more than one part of this subchapter, the requirements of each part must be met. A single permit authorizing an activity under several parts of this subchapter B may be issued. A single application for such a permit will be accepted if it includes all of the information required to justify each specific permitted activity to be authorized.

5. Section 13.3 is revised to read as follows:

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including ''Importation, Exportation and Transportation of Wildlife'' (Part 14), ''Wild Bird Conservation Act'' (Part 15), ''Injurious Wildlife'' (Part 16), ''Endangered Wildlife and Plants'' (Part 17), ''Marine Mammals'' (Part 18), ''Migratory Bird Permits'' (Part 21), ''Eagle Permits'' (Part 22), and ''Endangered Species Convention'' (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) (Part 23)—except as provided in § 13.22(c). As used in this part 13 the term ''permit'' will refer to a license, permit, or certificate as the context may require and to all such documents issued by the Service or other authorized United States or foreign government agencies.

6. Section 13.11 is amended by revising the introductory text to the section, by revising paragraphs (b)(2) and (b)(3), by adding paragraph (b)(4), by revising paragraphs (c), (d)(2), (d)(3), (d)(4) and (e) to read as follows:

§ 13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this subchapter B unless the applicant has filed an application in accordance with the following procedures:

* * * * *

(b) * * *

(2) Exception to designated port (50 CFR part 14), import/export license (50 CFR 14.93), migratory bird permit other than banding (50 CFR part 21), and bald or golden eagle permits (50 CFR part 22) may be obtained by writing to the Assistant Regional Director for Law Enforcement of the Region in which the applicant resides (see 50 CFR 10.22 for addresses and boundaries of the Regions).

(3) Wild Bird Conservation Act (50 CFR part 15); injurious wildlife (50 CFR part 16); endangered and threatened species, except incidental take, and native species take and interstate commerce (50 CFR part 17); marine mammals (50 CFR part 18); and permits and certificates for the Convention on International Trade in Endangered Species of Wild Fauna and Flora

(CITES), (50 CFR part 23) may be obtained by writing to: Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420C, Arlington, Virginia 22203.

(4) Endangered and threatened species incidental take permits (50 CFR 17.22(b)), and native endangered and threatened species take and interstate commerce permits may be obtained by writing to: Regional Director (Attention: *Endangered/Threatened Species Permits*) of the Region where the activity is to take place (see 50 CFR 10.22 for addresses and boundaries of the Regions).

(c) *Time notice.* The Service will process all applications as quickly as possible. However, it cannot guarantee final action within the time limits the applicant requests. Applications for permits for marine mammals and/or endangered and threatened species should be postmarked at least 90 calendar days prior to the requested effective date. Time required for the processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects. Applications for all other permits should be submitted to the issuing/reviewing office and be postmarked at least 60 calendar days prior to the requested effective date. The processing time of permits may be increased by the procedural requirements of the National Environmental Policy Act (NEPA). When applicable, the Service may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with the procedural requirements of NEPA.

(d) * * *

(2) If regulations in this subchapter require more than one type of permit for an activity and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity pursuant to § 13.1. The issuing office in such instance may charge only the highest single fee for the activity permitted.

(3) A fee will not be charged to any Federal or State government agency nor to any individual or institution under contract to such agency for the proposed activities. The fee may be waived or reduced for public institutions (see 50 CFR 10.12). Proof of status as a Federal or State government agency must accompany the application. Except as otherwise authorized or waived, the failure to submit evidence of such status with the application will require the submission of all processing fees prior to the acceptance of the application for processing.

(4) *User fees.*

(i) Standard user fee.

Type of permit	Fee
Except as provided in paragraph (d)(4)(ii) of this section, the standard fee for processing any application	$50

(ii) Nonstandard user fees.

Marine Mammals	
Public Display and Scientific Research (18.31)	$250
Registered Tanners/Agents (18.23(d))	75
Endangered Species Act (ESA)	
Captive-bred Wildlife:	
New Requests	175/3 years
Renewals and Pheasants	75/3 years
ESA Import, Take, and Interstate Commerce	175
ESA Export and Foreign Commerce	100
CITES Import	150
CITES Trophy Import	50
CITES Reissuance, Pre-Convention, Captive-bred, Artificially Propagated Plants, and Certificate of Origin	75
CITES Pet Export/Re-Export	35
CITES Export	125
CITES Appendix II Export of native furbearers and alligators (excluding live)	75
CITES Appendix II, III Re-Export	125
Import/Export License (14.93)	55
Injurious Wildlife (Part 16)	75
Wild Bird Conservation Act (Part 15)	
Personal Pet Import (15.25)	50
Scientific Research, Zoological Breeding or Display, and Cooperative Breeding (15.22, 15.23, 15.24)	150
Approval of Cooperative Breeding Programs	200
Approval of Foreign Breeding Facilities	250/species
Migratory Bird (Part 21)	
Bird-Banding/Marking (21.22)	None
Special Purpose—Rehabilitation/Educational (21.27)	None
Special Purpose—Depredation, Private Individuals (Non-Commercial) (21.27)	25
Bald and Golden Eagles (Part 22)	None
Indian Religious or Ceremonial Use (Part 21, 22.22)	None

(e) *Abandoned or incomplete applications.* Substantially incomplete or improperly executed applications may be returned to the applicant. If the application is only lacking minor information or the proper fees, the issuing/reviewing office will accept the application for processing and notify the applicant of the deficiency. If the applicant fails to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, the Service will consider the application abandoned. The Service will not refund fees for an abandoned application.

7. Section 13.12 is amended by revising paragraphs (a)(4) and (b) to read as follows:

§ 13.12 General information requirements on applications for permits.

(a) * * *

(4) If the requested permit activity involves the import, export, or re-export

of wildlife or plants from or to any foreign country, and the country of origin or the country of export or re-export restricts the taking, possession, transportation, exportation, or sale of wildlife or plants, documentation as indicated in § 14.52(c) of this subchapter B;

* * * * *

(b) *Additional information required on permit applications.* As stated in paragraph (a)(3) of this section certain additional information is required on all applications. These additional requirements may be found by referring to the section of this subchapter B cited after the type of permit for which application is being made:

Type of permit	Section
Importation at Nondesignated Ports:	
Scientific	14.31
Deterioration Prevention	14.32
Economic Hardship	14.33
Import/Export License	14.93
Wild Bird Conservation Act Permits:	
Scientific Research	15.22
Zoological Breeding or Display	15.23
Cooperative Breeding	15.24
Personal Pets	15.25
Injurious Wildlife: Importation or Shipment	16.22
Endangered Wildlife and Plant Permits:	
Similarity of Appearance	17.52
Scientific, Enhancement of Propagation or Survival, Incidental Taking of Wildlife	17.22
Scientific, Enhancement of Propagation or Survival for Plants	17.62
Economic Hardship for Wildlife	17.23
Economic Hardship for Plants	17.63
Threatened Wildlife and Plant Permits:	
Similarity of Appearance	17.52
General for Wildlife	17.32
General for Plants	17.72
Marine Mammals Permits:	
Scientific Research	18.31
Public Display	18.31
Registered Agent or Tanner	18.23(d)
Migratory Bird Permits:	
Banding or Marking	21.22
Scientific Collecting	21.23
Taxidermist	21.24
Waterfowl Sale and Disposal	21.25
Special Purpose	21.27
Falconry	21.28
Raptor Propagation Permit	21.30
Depredation Control	21.41
Eagle Permits:	
Scientific or Exhibition	22.21
Indian Religious Use	22.22
Depredation Control	22.23
Falconry Purposes	22.24
Take of Golden Eagle Nests	22.25
Endangered Species Convention Permits (CITES)	23.15

8. Section 13.21 is amended by revising paragraphs (a), (b), (c)(1), (c)(2), (e)(2), and (g) as follows:

§ 13.21 Issuance of permits.

(a)(1) No permit may be issued prior to the receipt of a written application unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Service. An oral or written representation of an employee or agent of the United States Government or an action of such employee or agent will not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(2) For the purpose of this part, a determination as to an applicant's exercise of responsibility is to include consideration of such factors as:

(i) Level of competence, ability, skill, knowledge, training, and/or the suitability of facilities, particularly for live animals and plants;

(ii) Prior wildlife or plant violations;

(iii) Failure to qualify or fulfill any criteria or conditions applicable to the permit; or

(iv) Prior violations involving misrepresentation of material facts; falsified documents; false labeling or invoicing; failure to present documents, wildlife, or plants for examination or inspection; or other circumstances involving concealing, evading, or circumventing detection of wildlife or plant violations.

(b) *Issuance criteria.* Upon receipt of a properly executed application for a permit, the Director or Regional Director will issue the appropriate permit unless:

(1) The applicant has been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility in accordance with paragraph (a)(2) of this section.

(2) The applicant has failed to disclose material information required or has made false statements as to any material fact in connection with his/her application.

(3) The applicant has failed to demonstrate a valid justification for the permit;

(4) The authorization requested potentially threatens a wildlife or plant population;

(5) The Director or Regional Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified;

(6) The applicant has failed to fulfill the applicable requirements of this subchapter B;

(7) The applicant has failed to comply with the conditions of previously held permits;

(8) The applicant has failed to exercise responsibility in accordance with § 13.21(a)(2); or

(9) The applicant has conducted the activity prior to the issuance of the permit required by subchapter B.

(c) * * *

(1)(i) A conviction or entry of a plea of guilty or nolo contendere for a criminal violation of the Lacey Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, Endangered Species Act, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Airborne Hunting Act, Marine Mammal Protection Act, Wild Bird Conservation Act, or African Elephant Conservation Act will disqualify such person from receiving or exercising the privileges of a permit for a period of 5 years from the date of most recent conviction or entry of judgment, unless such disqualification has been expressly waived by the Director or Regional Director in response to a written petition.

(ii) The assessment of one or more civil penalties for violation(s) of the Lacey Act, Bald and Golden Eagle Protection Act, Endangered Species Act, CITES, Airborne Hunting Act, Marine Mammal Protection Act, Wild Bird Conservation Act, or African Elephant Conservation Act will disqualify such person from receiving or exercising the privileges of a permit for a period of 5 years, from the date of most recent assessment, where such assessment(s) evidences a lack of responsibility in accordance with paragraph (a)(2) of this section, unless such disqualification has been expressly waived by the Director or Regional Director in response to a written petition.

(2) The revocation of a permit for reasons found in § 13.28 (a)(1), (a)(2), or (a)(3) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of 5 years from the date of the final agency decision on such revocation, unless such disqualification has been expressly waived by the Director or Regional Director in response to a written petition.

* * * * *

(e) * * *

(2) Any person accepting and holding a permit under this subchapter B acknowledges the necessity for close regulation and monitoring of the permitted activity by the Government. By accepting such permit, the permittee consents to and will allow entry by agents or employees of the Service, or authorized State official upon premises where the permitted activity is conducted at any reasonable hour, as established or evidenced by actual operation, or normal or expected hours of operation for the type or similar type of business, trade, operation, or activity. Service agents or employees may enter such premises to inspect the location; and inspect, audit or copy any books, records, or permits required to be kept by this subchapter B; and inspect any wildlife or plants kept under authority of the permit.

(f) * * *

(g) *Denial.* The issuing/reviewing office may deny a permit to any applicant who fails to meet the issuance criteria set forth in this section or in the part(s) or section(s) specifically governing the activity for which the permit is requested. The applicant will be provided with a written explanation stating the basis for the denial and of the right to request reconsideration. Except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process.

9. Section 13.22 is amended by adding introductory text to the section and by revising paragraphs (a), (c), and (d) to read as follows:

§ 13.22 Renewal of permits.

Generally, a permit under this subchapter B may be renewed provided the specified permit activity authorized thereunder has not been completed.

(a) *Application for renewal.* Applicants to renewal of a permit must submit a written application, complete in all regards, at least 30 calendar days prior to the expiration date of the current permit. Applicants for renewal must certify in the form required by § 13.12(a)(5) that all statements and information in the original application remain current and correct, unless previously changed or corrected. If such information is no longer current or correct, the applicant must provide corrected information. Except where otherwise provided by written authorization, any renewal of application information remaining unchanged for a period of more than 4 years may be regarded as outdated, and the applicant required to provide a new and complete application information upon request.

* * * * *

(c) *Continuation of permitted activity.* Any person holding a valid and renewable permit, currently in force and not suspended or revoked, who has complied with this section may continue the activities authorized by the expired permit until the Service has acted on such person's application for renewal. The terms of this provision do not apply to permits or certificates issued under CITES in accordance with part 23, which are void upon expiration.

(d) *Denial.* The issuing/reviewing office may deny renewal of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21 of this part or in the part(s) or section(s) specifically governing the activity for which the renewal is requested. The applicant will be provided a written explanation of the basis for the denial and of the right to request reconsideration. Upon receipt of a denial the applicant will be required to cease all activities authorized by the permit. Except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process.

10. Section 13.23 is amended by revising paragraph (a), by revising paragraph (c), and by adding paragraph (d) to read as follows:

§ 13.23 Amendment of permits.

(a) *Permittee's request.* Where circumstances have changed so that a permittee desires to have any condition of his/her permit modified, such permittee must submit a full written justification and supporting information in conformance with this part and the part under which the permit was issued.

* * * * *

(c) *Change of name or address.* A permittee is not required to obtain a new permit if there is a change in the legal individual or business name or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of any such change. Where the issuing office is not so notified and reasonable efforts to contact the permittee by certified and/or registered mail have failed, the permit will be canceled. The canceled permit may be reinstated if the permittee subsequently contacts the issuing office within 90 calendar days. This provision does not authorize any

change in location of the conduct of the permit activity when approval of the location is a qualifying condition of the permit.

(d) *Denial.* The issuing/reviewing office may deny amendments of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21 of this part or in the part(s) or section(s) specifically governing the activity for which the amendment is requested. The applicant will be provided a written explanation of the basis for the denial and of the right to request reconsideration. Except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process.

11. Section 13.27 is amended by revising paragraph (a), by revising paragraph (b)(2), and by revising paragraph (b)(3) and by adding paragraph (b)(4) to read as follows:

§ 13.27 Permit suspension.

(a) *Criteria for suspension.* The following criteria will apply except: pursuant to a court order; in cases of willfulness; or in cases where the public health, interest, or safety requires otherwise. In general the privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit or with any applicable laws or regulations governing the conduct of the permitted activity. The issuing/reviewing office may also suspend all or part of the privileges authorized by a permit if the permittee fails to pay any fees, penalties, or costs owed to the Government.

(b) * * *

(2) Upon receipt of a notice of proposed suspension the permittee may file a written objection to the proposed action. Such objection must be in writing, must be postmarked within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed suspension, and may include supporting documentation and any new information.

(3) A decision on the proposed suspension will be made within 45 calendar days after receipt of the objection, or the end of the objection period if the permittee does not respond within the objection period, unless extended for good cause and the permittee is notified of the extension. In the event of an adverse decision on the permittee's written objection, the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons thereof together with the information concerning the right to appeal the decision under § 13.29(e) of this part, and the procedures thereof.

(4) A permit suspended under paragraph (b)(3) of this section will be subject to revocation in accordance with § 13.28(c) when the permittee fails to correct the deficiencies that were the cause of the permit suspension within 45 calendar days of the following: (i)(A) Receipt of the suspension action under paragraph (b) of this section; or (B) the date of adverse decision under the appeal process set forth in § 13.29(e). (ii) Where the permittee has provided written notification to clearly show the deficiencies that were the cause of permit suspension have been corrected within the 45 days of this subparagraph, a decision on the revocation will be made within 45 calendar days after receipt of the notice of correction.

12. Section 13.28 is amended by revising paragraph (a) and the heading of paragraph (b); adding paragraph (b) introductory text revising paragraphs (b)(2), (b)(3), and (b)(4); by adding paragraphs (c) and (d) to read as follows:

§ 13.28 Permit revocation.

(a) *Criteria for revocation.* The following criteria will apply, except: pursuant to a court order; or in cases of willfulness; or in cases where the public health, interest, or safety require otherwise. A permit may be revoked for any of the following reasons:

(1) The permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the law(s) or regulation(s) governing the permitted activity, that results in a felony conviction, or entry of a plea of guilty or nolo contendere. The revocation will disqualify any such person in accordance with § 13.21(c)(2) from receiving or exercising the privileges of a similar permit for a period of 5 years; or

(2) The permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the laws or regulations governing the permitted activity resulting in a conviction, or entry of a plea of guilty or nolo contendere for any misdemeanor violation, or the assessment of a penalty for a civil violation if such assessment or conviction evidences a lack of responsibility. The revocation will disqualify any such person in accordance with § 13.21(c)(2) from receiving or exercising the privileges of a similar permit for a period of 5 years; or

(3) The permittee fails to correct deficiencies that were the cause of a permit suspension, within 45 calendar days of receipt of the suspension action in accordance with § 13.27(b) or, if appealed, within 45 calendar days of the date of an adverse decision under the appeal process set forth in § 13.29(e). The revocation will disqualify any such person, in accordance with § 13.21(c)(2), from receiving or exercising the privileges of a similar permit for a period of 5 years; or

(4) The permittee becomes disqualified under § 13.21(c) of this part; or

(5) A change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by the Service; or

(6) The population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population;

(7) The permittee failed to disclose material information required or made false statements as to any material fact in connection with his or her permit application or as to the conduct of activities under his or her permit;

(8) The permittee has failed to exercise responsibility in accordance with § 13.21(a)(2);

(9) The Director or Regional Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified; or

(10) The permittee has failed to fulfill the applicable requirements of this subchapter B.

(b) *General procedures for revocation.* Except as provided in paragraph (c) of this section, the following procedures will apply.

* * * * *

(2) Upon receipt of a notice of proposed revocation the permittee may file a written objection to the proposed action. Such objection must be in writing, must be postmarked within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed revocation, and may include supporting documentation and any new information.

(3) A decision on the proposed revocation will be made within 45 calendar days after receipt of the objection or the end of the objection period if the permittee does not respond within the objection period, unless

extended for good cause and the permittee is notified of the extension. In the event of an adverse decision on the permittee's written objection the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons therefor, together with the information concerning the right to appeal the decision under § 13.29(e) of this part, and the procedures for appeal.

(4) Unless a permittee files a timely appeal as set forth in § 13.29(e), any wildlife or plants held under authority of a permit that is revoked must be disposed of in accordance with instructions of the issuing/reviewing office. If a permittee files a timely appeal of a permit revocation, such permittee may retain possession of any wildlife or plants held under authority of the permit until final disposition of the appeal process.

(c) *Special procedures for revocation.* A suspension permit will be subject to revocation when a permittee fails to correct deficiencies that were the cause of the permit suspension, in accordance with § 13.28(a)(3) and the procedures of this section:

(1) When the issuing/reviewing office believes there are valid grounds for the revocation of a permit suspended under the criteria of § 13.27(a) for reasons found in § 13.28(a)(3), the permittee will be notified in writing of the revocation by certified or registered mail. This notice will identify: the permit that has been revoked; the reason(s) for such revocation; the effective date of revocation; the proposed disposition of the wildlife or plants, if any; and inform the permittee that such revocation is without recourse to further administrative procedures and of the permittee disqualification for 5 years in accordance with § 13.21(c)(2). The issuing/reviewing office may amend any notice of revocation at any time.

(2) Any wildlife or plants held under authority of a permit that has been subjected to permit suspension in accordance with § 13.27, where the permittee has failed to correct deficiencies that were the cause of the permit suspension in accordance with § 13.28(a)(3) must be disposed of in accordance with instructions of the issuing/reviewing office.

(d) *Time allocated for administrative procedures.*

(1) *Suspension (§ 13.27(b)).*

(i) Written objection postmarked within 45 calendar days of the date of proposed suspension (§ 13.27(b)(2)).

(ii) Service decision within 45 calendar days after receipt of the objection or end of the objection period (§ 13.27(b)(3)).

(iii) Correct deficiencies within 45 calendar days of the date of the suspension (§ 13.27(b)(4)).

(iv) Appeal of adverse decision postmarked within 45 calendar days of the date of the notification (§ 13.27(b)(3)).

(v) Correct deficiencies within 45 calendar days of the date of the denial of the appeal (§ 13.27(b)(4)).

(2) *Revocation (§ 13.28(b)).*

(i) Written objection postmarked within 45 calendar days of the date of proposed revocation (§ 13.28(b)(2)).

(ii) Service decision within 45 calendar days after receipt of the objection or end of the objection period (§ 13.28(b)(3)).

(iii) Appeal of adverse decision postmarked within 45 calendar days of the date of the notification (§ 13.28(b)(3)).

(iv) The decision of the Director or the Regional Director will constitute the final administrative decision of the Department of the Interior (§ 13.29(f)(e)).

(3) *Revocation of suspended permit (§ 13.28(c)).*

(i) Occurs if permittee has failed to correct deficiencies that resulted in suspension under § 13.27(b)(3) within 45 calendar days of either: the receipt of the suspension action in accordance with § 13.28(a)(3) or, if the suspension is appealed, the date of a final adverse decision under the appeal process set forth in § 13.29(e).

(ii) The permittee will be notified in writing of the permit revocation by certified or registered mail. Revocation under 13.28(c) is without recourse to further administrative procedures (§ 13.28(c)(1)).

(4) *Other review procedures.* Denial under § 13.29(a)(1), or denial of renewal § 13.29(a)(2), amendment § 13.29(c) or required amendment § 13.29(a)(3), and partial denial of permit issued, renewed, or amended § 13.29(a)(4).

(i) Written reconsideration (include certification) postmarked within 45 calendar days of notification of the decision (§ 13.29(b)(2), § 13.29(b)(4)).

(ii) Service decision within 45 calendar days after receipt of the request for reconsideration (§ 13.29(d)).

(iii) Appeal of an adverse decision postmarked within 45 calendar days of the date of notification (§ 13.29(e)).

(iv) The decision of the Director or the Regional Director will constitute the final administrative decision of the Department of the Interior (§ 13.29(f)(e)).

13. Section 13.29 is amended by revising (a) introductory text, (a)(3), (a)(4), (b)(2), (b)(4), (d) and (e), by redesignating the existing paragraphs (f)(1), (2) and (3) as (f)(2), (3), and (4), by adding a new paragraph (f)(1) and by revising newly designated paragraphs (f)(2), (3) and (4) to read as follows:

§ 13.29 Review procedures.

(a) *Request for reconsideration.* Except when the activity requested is one for which there is no lawful authority to issue a permit and in actions revoking a suspended permit in accordance with § 13.28(a)(3) for failure to correct the deficiencies that were the cause of permit suspension, any person may request reconsideration of an action under this part if that person is one of the following:

* * * * *

(3) A permittee who has a permit amended, except for those actions that are required by changes in statutes or regulations or are emergency changes of limited applicability for which an expiration date is set within 90 calendar days of the permit change; or

(4) A permittee who has a permit issued, renewed, or amended, but has not been granted authority by the permit to perform all activities requested in the application.

(b) * * *

(2) The request for reconsideration must be postmarked within 45 calendar days of the date of notification of the decision for which reconsideration is being requested.

* * * * *

(4) The request for reconsideration will contain a certification in substantially the same form as that provided by § 13.12(a)(5). If a request for reconsideration does not contain such certification, but is otherwise timely and appropriate, it will be held, and the person submitting the request will be given written notice of the need to submit the certification within 15 calendar days of the date of the notice. Failure to submit certification will result in the request being rejected as insufficient in form and content.

* * * * *

(d) *Determination of grant or denial of a request for reconsideration.* The issuing/reviewing office will notify the applicant or permittee of the Service's decision within 45 calendar days of the receipt of the request for reconsideration or the certification, if submitted separately, unless extended for good cause and the applicant or permittee is notified of the extension. This notification will be in writing, will state the reasons for the decision, and will contain a description of the evidence that was relied upon by the issuing/reviewing office. If the decision is adverse, the notification will also provide information concerning the right to appeal, the official to whom an

appeal may be addressed, and the procedures for making an appeal.

(e) *Appeal.* Except for actions revoking a suspended permit in accordance with § 13.27(a), § 13.28(a)(3), and § 13.28(c), a person who has received an adverse decision following submission of either a written objection to a suspension or revocation or a request for reconsideration may submit a written appeal to the Regional Director for the region in which the issuing/reviewing office is located or to the Director, for offices that report directly to the Director. An appeal when submitted must be postmarked within 45 calendar days of the date of the notification of the decision on the objection to a suspension or revocation, or the request for reconsideration. The appeal will state the reason(s) and issue(s) upon which the appeal is based and may contain any additional evidence or arguments to support the appeal.

(f) * * * (1) The Director or the Regional Director may designate any staff member(s) to assist in analyzing the issues and may include the recommendations of the issuing/reviewing office.

(2) Before a decision is made concerning the appeal, the appellant may present oral arguments before the Director or the Regional Director, as appropriate, if such official judges oral arguments are necessary to clarify issues raised in the written record.

(3) The Service will notify the appellant in writing of its decision within 45 calendar days of receipt of the appeal, unless extended for good cause and the appellant is notified of the extension.

(4) The decision of the Director or the Regional Director will constitute the final administrative decision of the Department of the Interior.

14. Section 13.30 is added to subpart C to read as follows:

§ 13.30 Table of references.

(a) Exercise of Responsibility Determinations: A determination as to whether an applicant or permittee has exercised responsibility under the considerations of § 13.21(a)(2).	Will be made for the reasons specified in § 13.21(b)(1), § 13.21(b)(3), § 13.21(b)(8), § 13.21(c)(1)(ii), or § 13.28(a)(2).1
(b) The Effects of Disqualification: A disqualification for reasons specified in § 13.21(c).	Will result in denial of a new permit [§ 13.21(g)], renewal of a permit [§ 13.22(b)], and amendment of a permit [§ 13.23(c)], or revocation of any existing permit [§ 13.28(a)(4)].
(c) Procedures for Denial: Permit under § 13.21(g), Renewal under § 13.22(d), Amendment under § 13.23(c), or Partial Denial under § 13.29(a)(4). An applicant for a permit who has received a written notice of denial.	May file a request for reconsideration under the procedures specified in § 13.29(b) and may then file a timely appeal when appropriate under § 13.29(e).
(d) Procedures for Permit Amendment(s) Initiated by the Service: A permittee [see § 13.29(a)(3)] who has a permit amended under § 13.23(b).	May file a request for reconsideration under the procedures specified in § 13.29(b) and may then file a timely appeal when appropriate under § 13.29(e).
(e) Procedures for Suspension of a Permit: A permittee who has a permit suspended in accordance with § 13.27.	May file a written objection as specified in § 13.27(b)(2) and may then file a timely appeal in accordance with § 13.27(b)(3) when appropriate under § 13.29(e).
(f) General Procedures for Revocation of a Permit: A permittee who has received a proposed revocation for reasons specified in § 13.28(a)(1), § 13.28(a)(2), § 13.28(a)(4), § 13.28(a)(5), § 13.28(a)(6), § 13.28(a)(7), § 13.28(a)(8), § 13.28(a)(9), or § 13.28(a)(10).	May file a written objection as specified in § 13.28(b)(2) and may then file a timely appeal in accordance with 13.28(b)(3) when appropriate under § 13.29(e).
(g) Special Procedures for Revocation of a Suspended Permit, Where Applicant Has Failed to Correct Deficiencies That Were the Cause of a Suspension: A suspended permit revoked for reasons specified in § 13.28(a)(3).	Will follow the revocation procedures specified in § 13.28(c).
(h) The Effects of a Prior Revocation on Subsequent Permits:	Will result in disqualification for a permit under § 13.21(c)(2).
A prior revocation for reason specified in § 13.28(a)(1), § 13.28(a)(2), or § 13.28(a)(3).	

15. Section 13.41 is revised to read as follows:

§ 13.41 Humane conditions.

Any live wildlife or plants possessed, held, transported and/or imported under a permit must be maintained under humane and healthful conditions to include 9 CFR subchapter A, 50 CFR part 14, subpart J, and other conditions of a permit that may apply.

16. Section 13.46 is revised to read as follows:

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee will maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of plants or wildlife pursuant to such permit. Such records will be kept current and will include names and addresses of persons from or with whom any plant or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction; date of death or escape; and such other information as

may be required or appropriate. Such records will be legibly written or reproducible in English and will be maintained for 5 years from the date of expiration of the permit.

17. Section 13.47 is revised to read as follows:

§ 13.47 Inspection requirement.

Any person holding a permit under this subchapter B will allow the Director's or Regional Director's agent to enter his premises at any reasonable hour, as established or evidenced by actual operation, or normal or expected hours of operation for the type or similar type of business, trade, operation, or activity, to inspect any wildlife or plant held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of this subchapter B.

18. The authority citation for Part 17 is revised to read as follows:

Authority: 16 U.S.C. 1361–1407, 1531–1544, 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Subpart C—Endangered Wildlife [Amended]

19. Section 17.22 is amended by revising paragraphs (a)(1) introductory text and (b)(1) introductory text to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* Applications for permits under this paragraph for native endangered species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the activity prohibited by § 17.21 (c) and (e). Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native endangered species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the activity prohibited by § 17.21. Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment, all of the following information:

* * * * *

(b)(1) *Application requirements for permits for incidental taking.* Applications for permits under this paragraph must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the activity is to take place (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the activity prohibited by § 17.21(c). Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment all of the following information:

* * * * *

Subpart D—Threatened Wildlife [Amended]

20. Section 17.32 is amended by revising paragraphs (a)(1) introductory text and (b)(1)(i) to read as follows:

§ 17.32 Permits—general.

* * * * *

(a)(1) *Application requirements for scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or special purposes consistent with the purposes of the Act.* Applications for permits under this paragraph for native threatened species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the prohibited activity. Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native threatened species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management and Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the prohibited activity. Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment, as much of the following information that relates to the purpose for which the applicant is requesting a permit:

* * * * *

(b)(1) *Application requirements for permits for incidental taking.* (i) Applications for permits under this paragraph must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the activity is to take place (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the activity prohibited by § 17.31.

* * * * *

Subpart F—Endangered Plants [Amended]

21. Section 17.62 is amended by revising paragraph (a) introductory text to read as follows:

§ 17.62 Permits for scientific purposes or for the enhancement of propagation or survival.

* * * * *

(a) *Application requirements.* An application for a permit under this section for native endangered species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the prohibited activity. Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native endangered species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the prohibited activity. The permit for activities involving interstate commerce must be obtained by the seller if the plants are derived from cultivated stock, and by the buyer if the plants are taken from the wild. The application must be submitted on an official application form (Form 3–200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. Requirements differ for the issuance of a permit for activities dealing with plants obtained from the wild (excluding seeds), seeds and cultivated plants, or herbarium specimens. The applicant must provide in an attachment the following required information and any other information that is requested by the Director or Regional Director.

* * * * *

Subpart G—Threatened Plants [Amended]

22. Section 17.72 is amended by revising paragraph (a) introductory text to read as follows:

§ 17.72 Permits—general.

* * * * *

(a) *Application requirements.* An application for a permit under this section for native threatened species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the prohibited activity. Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native threatened species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the prohibited activity. The permit for activities involving interstate commerce must be obtained by the seller if the plants are derived from cultivated stock, and by the buyer if the plants are taken from the wild. The application must be submitted on an official application form (Form 3–200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. Requirements differ for the issuance of a permit for activities dealing with plants obtained from the wild (excluding seeds), seeds and cultivated plants, or herbarium specimens. The applicant must provide in an attachment the following required information and any other information that is requested by the Director or Regional Director.

* * * * *

Date: November 9, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Editorial Note: This document was received at the Office of the Federal Register on August 29, 1995.

[FR Doc. 95–21862 Filed 9–1–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950822210–5210–01; I.D. 081195A]

RIN 0648–AH94

Summer Flounder Fishery; Amendment 7

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement measures proposed in Amendment 7 to the Summer Flounder Fishery Management Plan (FMP). This amendment would revise the fishing mortality rate reduction schedule for summer flounder, with the intended effect of still rebuilding summer flounder stock abundance, while reducing short-term economic losses for participants in the fishery.

DATES: Comments on the proposed rule must be received on or before October 16, 1995.

ADDRESSES: Comments on the proposed rule should be sent to Dr. Andrew A. Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope ''Comments on Summer Flounder Plan.''

Copies of Amendment 7, the environmental assessment, and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508-281-9221.

SUPPLEMENTARY INFORMATION:

Background

Amendment 7 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC) and the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed amendment was published in the **Federal Register** on August 17, 1995 (60 FR 42830). Copies of the amendment are available from the Council upon request (see **ADDRESSES**). The amendment revises management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

The management unit continues to be summer flounder in U.S. waters in the western Atlantic Ocean from North Carolina northward. The objectives of the FMP are unchanged by this amendment: (1) Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur; (2) reduce fishing mortality of immature summer flounder to increase spawning stock biomass; (3) improve the yield from the fishery; (4) promote compatible management regulations between state and Federal jurisdictions; (5) promote uniform and effective enforcement of regulations; and (6) minimize regulations to achieve the management objectives stated above.

The regulations implementing the FMP, and its amendments, enact a broad spectrum of measures to stop overfishing and allow the stock to rebuild. These measures include a fishing mortality rate (F) reduction schedule. The reduction schedule was set at F of 0.53 for 1993–95, and F_{max} (0.23) in 1996 and thereafter. F_{max} is the biological reference point that corresponds to the level of fishing mortality that produces the maximum yield per recruit. The schedule was developed and adopted by the Council and ASMFC after lengthy deliberations. It was deemed an appropriate balance between effective reduction in fishing mortality and short-term economic burdens placed on participants in the fishery.

The Council and ASMFC conducted analyses of the fishing mortality rate reduction schedules during the development of Amendment 2. This reduction in fishing mortality was to be accomplished through a combination of minimum mesh size and minimum fish size restrictions and a coastwide annual quota divided between the recreational and commercial fisheries. Based on these analyses, the Council believed that by the fourth year of the rebuilding schedule (1996), the level of rebuilding in the stock would offset any significant reductions in quota. That is, it was assumed that the stock growth from years 1 to 3 would be large enough, so that by 1996 the quota would not be significantly different from the 1995 level.

However, although the stock has rebuilt from its 1989 low level, it has not recovered to the extent projected. Lower than expected recruitment levels

in 1993 and redirected exploitation patterns on more ages–0 and –1 fish produced a higher F than expected. Thus, in order to reach the target F of 0.23 in 1996, given our current knowledge of stock abundance and age distribution, the resulting quota would be approximately 11 million lb (4,990 mt), or about a 50 percent reduction from the 1995 quota. Because of the magnitude of this reduction, and the resulting short-term losses to the industry, the Council and ASMFC initiated a re-examination of the fishing mortality rate reduction schedule for summer flounder.

This examination included analyses of the impacts of proposed changes on future spawning stock biomass (SSB) and recruitment success. Based on virtual population analysis (VPA) results, there is a near linear relationship between summer flounder SSB and recruitment. Thus, as SSB increases, recruitment should also increase. Lower levels of recruitment from 1983 to 1993 were associated with SSB estimates ranging from 11 to 33 million lb (4,990 to 14,969 mt). The SSB estimates above 33 million lb (14,969 mt) were associated with higher recruitment levels. With the proposed amendment, the SSB for 1996 is estimated at 46 million lb (20,865 mt). Thus, the chance of recruitment failure associated with this proposed regulation is minimal.

Amendment 7, if approved, would revise the fishing mortality rate by deferring attainment of F_{max} until 1998. This revision would allow for more stable landings from one year to the next. The change would alleviate short-term economic burdens on the industry, yet slow the rate of stock rebuilding only slightly. The Council and ASMFC have adopted the following strategy: The fishing mortality rate would be reduced from the 1995 target (0.53) to 0.41 in 1996, 0.3 in 1997, and F_{max} in 1998 and beyond. In addition, the amendment specifies that the quota for 1996 and 1997 could not exceed 18.51 million lb (8,396 mt). This cap on the quota could result in an F in 1996 and 1997 lower than 0.41 and 0.3, respectively, but would not exceed these values. A quota level above the cap could be set in 1996 or 1997, but only if the resulting quota had an associated F of 0.23.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time, NMFS has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views, and comments received during the comment period.

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

NMFS prepared an initial regulatory flexibility analysis (IRFA) as a supplement to the regulatory impact review prepared by the Council, which describes the economic impacts this proposed rule would have on small entities, if adopted. Compared to the projected ex-vessel revenues for the 1995 summer flounder commercial fishery, estimated ex-vessel revenues would be only 20.1% less in 1996 if Amendment 7 is implemented, whereas under the existing regulations, estimated 1996 ex-vessel revenues would be 48.5% less than those in 1995. Anticipated ex-vessel revenues for the commercial fishery would thus decrease less under Amendment 7 than they would under existing regulations, resulting in an economic benefit to the fishery. Under Amendment 7, it is estimated that in 1996, an additional $6.7 million in ex-vessel revenues will be available, compared to the status quo, for distribution among as many as 1,098 permitted vessels. Copies of the IRFA are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 625

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 30, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is proposed to be amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

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

2. In § 625.20, paragraph (a) introductory text is revised to read as follows:

§ 625.20 Catch quotas and other restrictions.

(a) *Annual review*. The Summer Flounder Monitoring Committee will review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.53 in 1993 through 1995, 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18.51 million lb (8,396 mt), unless such fishing levels have an associated F of 0.23:

* * * * *

[FR Doc. 95–21947 Filed 8–30–95; 3:43 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 171
Tuesday, September 5, 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

Animal and Plant Health Inspection Service

[Docket No. 95–041–2]

Availability of Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Monsanto Company's corn line designated as MON 80100 that has been genetically engineered for insect resistance is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Monsanto Company in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Monsanto Company petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: August 22, 1995.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1995, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 95–093–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination that corn designated as MON 80100 that has been genetically engineered for insect resistance does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On June 7, 1995, APHIS published a notice in the **Federal Register** (60 FR 30061–30062, Docket No. 95–041–1) announcing that the Monsanto petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency (EPA), and the Food and Drug Administration in regulating the subject corn line and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether corn line MON 80100 posed a plant pest risk. The comments were to have been received by APHIS on or before August 7, 1995.

APHIS received nine comments on the Monsanto petition, from farmers, industry, universities, a growers association, and a State department of agriculture. All the commenters expressed support for the subject petition.

Analysis

Monsanto's corn line MON 80100 has been genetically engineered to express a CryCIA(b) insect control protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kurstaki* (*Btk*). *Btk* proteins are effective against certain lepidopteran insects, including European corn borer (ECB), a major corn pest. Results of field tests conducted by Monsanto under permits and notifications granted by APHIS and under an experimental use permit obtained from EPA indicate that corn plants producing the CryCIA(b) protein were protected throughout the growing season from leaf and stalk feeding damage caused by ECB. In addition to expressing the CryCIA(b) protein, the plants also express the selectable marker enzyme 5-enolpyruvylshikimate-3-phosphate synthase (CP4 EPSPS). The *cryIA(b)* gene and the CP4 EPSPS marker gene were introduced into the subject corn line by a particle acceleration method and their expression is under the control of the enhanced 35S promoter derived from the plant pathogen cauliflower mosaic virus.

The subject corn line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains certain gene sequences derived from plant-pathogenic sources. However, evaluation of field data reports from field tests of corn line MON 80100 conducted since 1992 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the subject corn plants' release into the environment.

Determination

Based on its analysis of the data submitted by Monsanto and a review of other scientific data, comments received from the public, and field tests of the subject corn, APHIS has determined that corn line MON 80100: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than lepidopteran-insect-resistant corn developed through traditional breeding techniques; (3) is unlikely to increase the weediness potential of any other cultivated plant or native wild species with which it can interbreed; (4) should not cause damage to raw or processed agricultural commodities; (5) is unlikely to harm organisms beneficial to the agricultural ecosystem; and (6) when cultivated, should not reduce the ability to control insects in corn and other crops. APHIS has also concluded that there is a reasonable certainty that new varieties developed from corn line MON 80100 will not exhibit new plant pest properties, i.e., properties substantially different from any observed in the field tested corn line MON 80100, or those observed in corn in traditional breeding programs.

The effect of this determination is that an insect-resistant corn line designated as MON 80100 is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of corn line MON 80100 or its progeny. However, the importation of the subject corn line or seed capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000–6005). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the subject corn line and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 28th day of August 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–21847 Filed 9–1–95; 8:45 am]

BILLING CODE 3410–34–P

Cooperative State Research, Education, and Extension Service

National Sustainable Agriculture Advisory Council; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the Cooperative State Research, Education, and Extension Service announces the following meeting:

Name: National Sustainable Agriculture Advisory Council.

Date: September 25–26, 1995.

Time: 8:30 am to 4:30 pm, Sept. 25, 8:30 am to 2 pm Sept. 26.

Place: Governor's House Hotel, Rhode Island Ave., 17th St., NW., Washington, DC.

Type of Meeting: Open to public.

Comments: The public may file written comments before or after the meeting with the contact person listed below. A specific time for public comments will be scheduled for the afternoon of September 25, 1995.

Purpose: To serve as an annual meeting for the National Sustainable Agriculture Advisory Council, and to advise the Secretary of Agriculture with respect to initiatives and priorities related to sustainable agriculture.

Contact Person for Agenda and More Information: Dr. Robert Myers, Director, Office of Sustainable Agriculture Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, South Building, Room 3863, 14th & Independence Ave., SW., Washington, DC 20250, Telephone 202–720–5623.

Done at Washington, DC this 25th day of August, 1995.

Alma Hobbs,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–21850 Filed 9–1–95; 8:45 am]

BILLING CODE 3410–22–M

Grain Inspection, Packers and Stockyards Administration

Designation for the Louisiana and North Carolina Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Louisiana Department of Agriculture and Forestry (Louisiana) and North Carolina Department of Agriculture (North Carolina) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 31, 1995, **Federal Register** (60 FR 16602), GIPSA asked persons interested in providing official services in the geographic areas assigned to Louisiana and North Carolina to submit an application for designation. Applications were due by May 1, 1995. There were three applicants: Louisiana and North Carolina each applied for designation to provide official services in the entire areas currently assigned to them; Saybolt-South Texas Inspection Service, Inc., main office located in Galena Park, Texas, applied for the entire Louisiana area.

GIPSA requested comments on the applicants in the June 1, 1995, **Federal Register** (60 FR 28571). Comments were due by June 30, 1995. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Louisiana is better able to provide official services in the geographic area for which they applied, and North Carolina is able to provide official services in the geographic area for which they applied. Effective October 1, 1995, and ending September 30, 1998, Louisiana is designated to provide official inspection and Class X and Class Y weighing services, and North Carolina is designated to provide official inspection services in the geographic areas specified in the March 31, 1995, **Federal Register**.

Interested persons may obtain official services by contacting Louisiana at 318–487–5088 and North Carolina at 919–733–4491.

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

Dated: August 25, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–21855 Filed 9–1–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Grand Forks (ND) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: Grand Forks Grain Inspection, Inc. (Grand Forks), asked that their designation be terminated on December 31, 1995, due to a change in ownership and the dissolution of the company. GIPSA is asking persons interested in providing official services in the specified geographic area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before September 11, 1995.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division,

GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the GIPSA Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

GIPSA designated Grand Forks, main office located in Grand Forks, North Dakota, to provide official inspection services, under the Act on February 1, 1995.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Grand Forks is scheduled to end on January 31, 1998. However, Grand Forks asked GIPSA to end its designation effective December 31, 1995, as a result of a change in ownership and dissolution of the corporation. Accordingly, GIPSA is announcing the end of the Grand Forks designation on December 31, 1995, and is asking for applications from interested parties.

The geographic area presently assigned to Grand Forks, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State Route 200 west-northwest to the western Traill County Line; the western Traill County line; the southern Grand Forks and Nelson County lines; the southern Eddy County line west to U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Exceptions to Grand Forks' assigned geographic area are the following locations inside Grand Forks' area which have been and will continue to be serviced by the following official agencies:

1. Grain Inspection, Inc.: Farmers Coop Elevator, Fessenden; Farmers Union Elevator, and Manfred Grain, both in Manfred; all in Wells County; and

2. Minot Grain Inspection, Inc.: Harvey Farmers Elevator, Harvey, Wells County.

Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning January 1, 1996, and ending October 31, 1998. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

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

Dated: August 25, 1995.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 95–21852 Filed 9–1–95; 8:45 am]

BILLING CODE 3410–EN–M

ARMS CONTROL AND DISARMAMENT AGENCY

Announcement of the Hubert H. Humphrey Fellowship Competition for the 1996–97 Academic Year

The United States Arms Control and Disarmament Agency will conduct a competition in 1996 for one-year Hubert H. Humphrey Fellowships in support of unclassified doctoral dissertation research in arms control, nonproliferation and disarmament studies. Law candidates for the Juris Doctor are also eligible if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for the Ph.D. candidates will be $8,000 plus reimbursement for tuition and fees up to a maximum of $6,000. Stipends and tuition for law candidates will be prorated according to the number of credits given for the research paper.

Qualified applicants must be citizens of the United States and degree candidates at a U.S. college or university. Candidates are asked to submit an application, a five-page thesis abstract with bibliography, three letters of reference, transcripts of all graduate course work, and university approval of the dissertation topic. The application deadline for the 1996 competition is March 15, 1996. Awards will be for a twelve month period beginning in September 1996 or January 1997.

For information and application materials please write to: Hubert H. Humphrey Doctoral Fellowship Program, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451; or call (703) 302–7714.

Dated: August 18, 1995.

Ambassador James Sweeney,

Chief Science Advisor.

[FR Doc. 95–21897 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–32–M

Announcement of the William C. Foster Fellows Visiting Scholars Program for the 1996–97 Academic Year

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition to select visiting scholars to serve at the Agency during the 1996–97 academic year. University faculty from a variety of fields are sought, including those in the physical sciences, international relations, economics, engineering, chemistry, biology, mathematics and computer science.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568), as amended, provides that ''a program for visiting scholars in the field of arms control, nonproliferation, and disarmament shall be established by the Director in order to obtain the services of scholars from the faculties of recognized institutions of higher learning.'' The law states that ''the purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control, nonproliferation, and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer * * *'' Scholars are known as William C. Foster

Fellows, in honor of the first Director of ACDA, who served from 1961 to 1969.

Up to six fellows will be selected in 1996. Assignments are available in the Bureaus of Strategic and Eurasian Affairs (SEA); Multilateral Affairs (MA); Intelligence, Verification and Information Management (IVI); and Nonproliferation Policy and Regional Arms Control (NP). Visiting scholars participate in a wide range of Agency activities, such as performing arms control research and analyses, evaluating data relating to compliance with treaties in force, supporting interagency development of arms control policy, and taking part in international arms control and disarmament negotiations.

Visiting scholars will be detailed to ACDA by their universities for one full year. The institutions will be compensated for the scholars' salaries and benefits in accordance with the Intergovernmental Personnel Act of 1970 and within Agency budgetary limitations. Each Fellow will receive reimbursement for travel to and from the Washington, DC area for his/her one year assignment and either a per diem allowance during the one year detail or relocation costs.

Qualified candidates must be citizens of the United States, on the faculty of a recognized U.S. institution of higher learning, and tenured or on a tenure track. ACDA is an equal opportunity employer. Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap that does not interfere with performance of duties. Prior to appointment, all candidates will be subject to a full-field background investigation for a Top Secret security clearance, as required by Section 45 of the Arms Control and Disarmament Act, as amended. Visiting scholars will be subject to applicable Federal conflict of interest laws and standards of conduct.

To apply, candidates must submit a letter outlining their interests and qualifications, a curriculum vitae, copies of two publications, and optional supporting material such as letters of reference. Applicants will be evaluated based on their potential to provide expertise or to perform services critical to ACDA's mission. The application deadline for assignments for the 1996–97 academic year is January 31, 1996, subject to extension at the Agency's discretion. ACDA expects to announce tentative selections in June 1996.

For an information brochure, please write to: Foster Fellows Program, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451; or call (703) 302–7714.

Dated: August 18, 1995.

Ambassador James Sweeney,

Chief Science Advisor.

[FR Doc. 95–21898 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–32–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, September 28, 1995, at the Embassy Suites, 110 W. Washington, Indianapolis, Indiana 46204. The purpose of the meeting is to review the draft report, ''The Enforcement of Affirmative Action Compliance in Indiana under Executive Order 11246,'' and discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Paul Chase, 317–920–3190, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 29, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–21856 Filed 9–1–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 4 p.m. and adjourn at 8 p.m. on Thursday, September 21, 1995, at the Crown Sterling Suites, 425 S. 7th Street, Minneapolis, Minnesota 55415. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Karon J. Rogers at 612–661–4713, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 29, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–21857 Filed 9–1–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Thursday, September 28, 1995, at the Marietta Tower, Social Security Training Room, Suite 2801, 101 Marietta Street, NW, in Atlanta, Georgia 30303. The purpose of this meeting is to: discuss a civil rights conference proposal, discuss the monitoring project on preparations for the 1996 Olympics, review current activities, and discuss civil rights problems and/or progress in State and nation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Elaine Alexander, 404–233–8414, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 25, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–21858 Filed 9–1–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology.

Title: National Voluntary Laboratory Accreditation Program (NVLAP)-NVLAP Information Collection System.

Form Number(s): None.

Agency Approval Number: 0693–0003.

Type of Request: Extension of a currently approved collection.

Burden: 2,400 hours.

Number of Respondents: 200.

Avg Hours Per Response: 2 hours.

Needs and Uses: The National Voluntary Laboratory Accreditation Program (NVLAP)-NVLAP Information Collection System collects information that is required from all laboratories applying for NVLAP accreditation. Applicants provide the minimum information, required by published accreditation criteria, to achieve effective on-site assessments and informed evaluations leading to sound accreditation decisions.

Affected Public: Business of other for–profit organizations, Not–for–profit institutions, Federal Government and State, Local or Tribal Government.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Virginia Huth, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Virginia Huth, OMB Desk Officer, Room 10236 New Executive Office Building, Washington, DC 20503.

Dated: August 30, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–21961 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–CW–F

Economic Development Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

John E. Corrigan
Awilda R. Marquez
Craig M. Smith
Chester J. Straub, Jr.
Stephen C. Browning

Anthony J. Calza,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 95–21899 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–BS–M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's Visiting Committee on Advanced Technology (NIST) will meet on Tuesday, September 12, 1995, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on NIST programs, the Advanced Technology Program: progress report and program definition, the Manufacturing Extension Partnerships, laboratory tours, and a discussion of the Institute budget.

Discussions on the NIST budget, including funding of the Applied Technology Program and the Manufacturing Extension Partnership and the staffing of management positions at NIST scheduled to begin at 8:30 a.m. and to end at 9:30 a.m. on September 12, 1995, will be closed.

DATES: The meeting will convene September 12, 1995, at 8:30 a.m. and will adjourn at 5 p.m. on September 12, 1995.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, at the National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 25, 1995, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the ATP and the MEP Programs may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 27, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–21844 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[Docket No. 950616159–5216–02; I.D. 081695E]

The Fishing Capacity Reduction Demonstration Program Funding Availability; Revisions

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

ACTION: Notice of program revision.

SUMMARY: A prior notice in the **Federal Register** announced the Fishing Capacity Reduction Demonstration Program (FCRDP) that provides $2 million for a pilot test approach for permanently reducing the fishing capacity in the Northeast multispecies groundfish fishery. NMFS adds sinking as a method of disposal for fishing vessels under the FCRDP. NMFS also extends the closing date by 2 weeks for submission or resubmission of applications to give applicants time to consider this alternative.

DATES: Effective August 30, 1995. Applications must be postmarked by September 19, 1995.

ADDRESSES: Applications should be sent to the Northeast Financial Services Branch, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Bruce Morehead, (301) 713–2358 or Leo Erwin, (508) 281–9203.

SUPPLEMENTARY INFORMATION:

Background

The FCRDP was described in an earlier notice: Notice of program for financial assistance (60 FR 32504, June 22, 1995).

Changes to the Program

In the previous notice, successful applicants were required to scrap their vessels as a condition of receiving funding under the FCRDP. Supervised sinking will be considered as an acceptable method of vessel disposal. The closing date for submission or resubmission of applications is extended for 2 weeks to allow applicants time to consider this alternative method of vessel disposition.

Alternative to Scrapping

The previous notice described scrapping of vessels as a required part of the consideration from vessel owners to qualify to receive payment under the FCRDP. Scrapping is one way to remove the vessel from the fishery. A second alternative, voluntary sinking, also exists and is an acceptable alternative under this notice. Voluntary sinking must be conducted within the confines and in compliance with all applicable Federal, state, and local environmental laws and regulations. Approval from Federal, state, and local authorities, as applicable, is required.

Classification

Applications under this program are subject to E.O. 12372, ''Intergovernmental Review of Federal Programs.''

This notice involves a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget (OMB control number 0648–0289).

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

Authority: 15 U.S.C. 713c–3(d).

Dated: August 28, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–21854 Filed 8–30–95; 9:11 am]

BILLING CODE 3510–22–F

[I.D. 082295A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team will hold a public meeting.

DATES: The meeting will be held on September 12 beginning at 10:00 a.m. and going into the evening until business for the day is completed, on September 13 from 8:00 a.m. until 5:00 p.m., and on September 14 from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the draft stock assessments, prepare the annual stock assessment and fishery evaluation document, and complete assignments arising from the August 15–18, 1995 Council meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Amanda Bennett at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 29, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–21950 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 081895A]

North Pacific Fishery Management Council; Committee Meeting

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

ACTION: Notice of meeting.

SUMMARY: The Pacific Northwest Crab Industry Advisory Group, formed by the North Pacific Fishery Management Council as a forum for Pacific Northwest participants in the Alaska crab fisheries to review and comment on crab issues, will meet.

DATES: The meeting will be held on September 25, 1995, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held in the Ranier Room of the Radisson Hotel, 17001 Pacific Highway South, Seattle, WA.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Arni Thomson, Alaska Crab Coalition, 3901 Leary Way NW., Suite 6, Seattle, WA, 98107; telephone: (206) 547–7560.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following subjects:

1. Consultation with staffs of the Alaska Department of Fish and Game and NMFS on Alaska crab fishery issues.

2. Review of the status of Alaska crab stocks.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 29, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–21949 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 081895B]

North Pacific Fishery Management Council; Committee Meetings

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

ACTION: Notice of meetings.

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Observer Oversight Committee (OOC) and Insurance Technical Committee (ITC) will meet.

DATES: The OOC will meet on September 11–13, 1995, and the ITC will meet on September 14. Exact starting times have not yet been determined; call the NPFMC office for details (see **ADDRESSES**).

ADDRESSES: Both meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA. Exact room numbers have not yet been determined; call the NPFMC office for details at (907) 271–2809.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, NPFMC; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agendas for the meetings will include the following subjects:

1. The OOC will address all issues of concern regarding the full implementation of the NPFMC Fisheries Research Plan and current Observer Program in general.

2. The ITC will continue discussions on insurance issues relating to the Observer Program and the NPFMC Fisheries Research Plan.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: August 29, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–21951 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 082995C]

Endangered Species; Permits

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

ACTION: Notice of receipt of two applications for scientific research permits P596 and P521B.

SUMMARY: Notice is hereby given that the New Jersey Division of Fish, Game and Wildlife (P596), and Dr. James Spotila (P521B) have applied in due form for permits to take listed sea turtles for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on these application must be received on or before October 5, 1995.

ADDRESSES: The applications and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Applications P596 and P521B request permits under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The New Jersey Division of Fish, Game and Wildlife (P596) requests authorization to capture five listed loggerhead sea turtles (*Caretta caretta*) per year by trawling, to be measured, weighed, tagged, and released. Dr. James Spotila (P521B) requests authorization to capture six listed leatherback sea turtles (*Dermochelys coriacea*) in the North Atlantic, for metabolic rate measurement.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on that particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: August 30, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–21952 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

Carol C. Darr
Michele C. Farquhar
William Gamble
Bernadette McGuire-Rivera
Richard D. Parlow
Neal B. Seitz
William Utlaut
Barbara S. Wellbery
Stephen C. Browning

Anthony J. Calza,

Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 95–21900 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–BS–M

Economics and Statistics Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration Senior Executive Service (SES) Performance Appraisal System:

Frederick T. Alt
O. Bryant Benton
Sally C. Ericsson
Arnold A. Jackson
Frederick T. Knickerbocker
John S. Landefeld
Robert W. Marx
Stanley D. Matchett
Martha F. Riche
Harry A. Scarr
Paula J. Schneider
Charles V. St. Lawrence
Charles Waite
Katherine K. Wallman

Anthony J. Calza,

Executive Secretary, Economics and Statistics Administration, Performance Review Board.

[FR Doc. 95–21901 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 12–13 September 1995.

Time of Meeting: 0800–1700, 12 September 1995; 0800–1300, 13 September 1995.

Place: USASSDC Headquarters—Arlington, VA.

Agenda: The Army Science Board Independent Assessment on ''Hit-To-Kill Interceptor Lethality'' will meet to receive an intelligence threat capabilities update and warhead lethality briefing from representatives of various national intelligence sources (CIA, DIA, NRO). This will be followed by a review of study group direction, identification of future briefings, outlining action items and defining a future schedule. The last major topic of this meeting will be to define special study group activities. The open portions of these meetings are open to the public. Any person may attend, appear before or file statements with the committee. The closed portions of these meetings will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–21976 Filed 9–1–95; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Proposed DoD/NASA Initiative: Use of Common Processes at Contractor Facilities

AGENCY: Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Department of Defense (DoD) and National Aeronautics and Space Administration (NASA) desire to achieve cost and schedule benefits, and improve quality, from maximum use of common processes for all programs in a contractor facility. Mutual recognition and acceptance of common processes will require concerted effort by interested contractors, their principal customers, and contract administration personnel. NASA, as well as other agencies, have committed to join with DoD in using common quality processes at shared contractor facilities.

The quality process is an ideal starting point for implementation because of its potential to apply commercial standards (e.g., ISO–9000/ANSI–ASQC Q9000) and advanced quality practices. Other common process opportunities also exist which may offer significant potential as well.

Initial contractor response to this announcement should be in the form of a brief concept paper outlining the transition approach and process that is proposed. The proposed process(es) should result in significant cost, schedule, or performance benefits. The concept paper should be submitted to the DPRO, the cognizant Defense Contract Management Area Office (DCMAO), or other Contract Administration Service (CAS) activity. The DPRO, DCMAO or cognizant CAS activity will work with the principal plant customers and contractor to achieve concurrence on the concept paper.

Once the approach for transitioning to common process has been established contractors may develop preliminary proposals. Contractor preliminary proposals for a common process should include the following information: Specify those processes that would be candidates for facility-wide application, describe the impact on your present system (contracts, programs and buying offices affected) any associated risks and/or anticipated benefits to you and the Government.

Submit your preliminary proposal to affected principal Government buying activities and the cognizant Contract Administration Services office. Proposals will be evaluated in order of receipt.

Should a common process be defined and accepted, individual contracts will be modified as appropriate. The Defense Contract Management Command (DCMC) office (or cognizant CAS activity) will facilitate the formulation of interface teams at the facility level to coordinate customer review and approval.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Zell, HQ Defense Contract Management Command, Product and Manufacturing Team, (703) 767–3395.

SUPPLEMENTARY INFORMATION:

A. Background

DoD is committed to improving the efficiency and effectiveness of our suppliers. The proposed initiative will facilitate the elimination of military unique process reviews.

B. Regulatory Flexibility Act

The proposed guidance will not have a significant economic impact on small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it does not require any additional time or cost on the part of the contractor. Any contractor effort is voluntary.

C. The proposed notice does not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501 et seq. and as such, the Paperwork Reduction Act does not apply.

John A. Merkwan,

LTC, USA, Executive Officer.

[FR Doc. 95–21889 Filed 9–1–95; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 6, 1995.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or

substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 28, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Performance Report for the Student Services Program.
Frequency: One time.
Affected Public: Not for profit institutions.
Reporting Burden:
Responses: 1.
Burden Hours: 3,181.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Data assures that grantees have conducted the project for which funded, signals problems of implementation, and indicates extent and quality of performance. The Department uses reports in evaluating projects for continuation, assessing technical assistance needs, determining future funding levels and in assigning scores to projects in competition for new grants.

[FR Doc. 95–21886 Filed 9–1–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–410–001]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Change in FERC Gas Tariff

August 29, 1995.

Take notice that Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) on August 23, 1995, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Sub. 3rd Revised Sheet No. 4A

Alabama-Tennessee proposes that this tariff sheet be made effective September 1, 1995.

According to Alabama-Tennessee, the purpose of this submission is to correct the filing made by Alabama-Tennessee on August 1, 1995 in the above-referenced docket. In particular, Alabama-Tennessee determined that it had not properly reflected the crediting of take-or-pay costs with respect to one of its customers, the Packaging Corporation of America (''PCA''). Alabama-Tennessee states that the instant filing properly accounts for the increase in take-or-pay charges billed Alabama-Tennessee by its upstream pipeline supplier, Tennessee Gas Pipeline Company, and allocated to PCA, as the same is affected by the discount Alabama-Tennessee is providing PCA and the limitations imposed by the settlement in Docket No. RP91–103 which the Commission approved on October 17, 1991.

Alabama-Tennessee requests that the Commission grant such waivers as may be required to accept and approve its filing as submitted.

Alabama-Tennessee states that copies of its filing were served upon the Company's jurisdictional customers and interested public bodies as well as all the parties shown on the Commission's official service list established in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 6, 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21868 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–82–000]

Barranquilla Lease Holding, Inc.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 29, 1995.

Take notice that on August 21, 1995, Barranquilla Lease Holding, Inc. (Barranquilla), c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

According to its application, Barranquilla is a Delaware corporation formed to acquire all of the voting shares of Los Amigos Leasing Company Ltd. (Leaseco), a Bermuda corporation which has been formed to purchase and lease certain equipment, including combustion and steam turbines, to Termobarranquilla S.A., Empresa de Servicios Publicos, a Colombian corporation, for use in an eligible facility being developed in Soledad, near Barranquilla, Colombia. Barranquilla further states that Corporacion Electrica de la Costa Atlantica, a Colombian utility, will purchase all of the electrical output from the facility.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 15, 1995 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21869 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–83–000]

EI Power, Inc.; Notice of Application for Determination of Exempt Wholesale Generator Status

August 29, 1995.

On August 21, 1995, EI Power, Inc. (''EI Power''), c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (''EWG'') status pursuant to Part 365 of the Commission's Regulations.

According to its application, EI Power is a Delaware corporation formed to engage in project development activities associated with the direct or indirect acquisition of ownership interests in one or more eligible facilities and/or EWGs. EI Power further states that it has previously been determined to be an EWG. 68 FERC ¶ 61,023 (1994). EI Power states that this filing is occasioned because EI Power intends to acquire all of the voting capital stock of (i) EI Barranquilla, Inc., a Delaware corporation, (ii) Guaracachi America, Inc., a Delaware corporation, (iii) Barranquilla Lease Holding, Inc., a Delaware corporation and (iv) International Power Advisors, Inc., a Delaware corporation.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 15, 1995 and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21870 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–84–000]

International Power Advisors, Inc.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 29, 1995.

Take notice that on August 21, 1995, International Power Advisors, Inc. (International Power), c/o Energy Initiatives, Inc, One Upper Pond Road, Parsippany, New Jersey 07054, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

According to its application, International Power, a Delaware corporation, was formed to operate and maintain, together with EI Services Colombia, Ltd., a gas fired electric generating facility with a capacity of up to 980 MW to be located in Soledad near Barranquilla, Colombia (the Facility). The Applicant intends to operate the Facility together with EI Services Colombia pursuant to an operation and maintenance agreement with the Facility's owner, Termobarranquilla S.A., Empresa de Servicios Publicos (''TEBSA''), a Colombia corporation. All of the Facility's electricity will be sold at wholesale to Corporacion Electrica de la Costa Atlantica, a Colombian entity.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 15, 1995 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21871 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–75–000]

Kva Resources, Inc.; Errata to Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 22, 1995.

Take notice that the Notice issued in the above-referenced docket on August 17, 1995 (60 FR 44332, August 25, 1995), should be disregarded and the following language should be replaced for the Notice in that docket:

On August 11, 1995, Kva Resources, Inc. (Applicant), 11100 Northeast 8th Street, Suite 550, Bellevue, Washington 98004, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a Delaware corporation engaged in the business of independent power development, intends to own and operate all or part of eligible facilities including an 838 MW electric generating facility located in the vicinity of Creston, Washington.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 12, 1995 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21872 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–86–000]

Pacific Gas Transmission Company; Notice of Annual Charge Adjustment

August 29, 1995.

Take notice that on August 23, 1995, Pacific Gas Transmission Company (PGT), tendered for filing and acceptance Eighth Revised Sheet Nos. 4 and 5, and Second Revised Sheet No. 6C to be included in its FERC Gas Tariff, First Revised Volume No. 1–A and Seventh Revised Sheet No. 7 to be included in its FERC Gas Tariff, Second Revised Volume No. 1.

The above tariff sheets have been revised to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to PGT.

PGT requests that the proposed tariff sheets become effective October 1, 1995.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 6, 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. 95–21873 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–705–000]

Shell Offshore Inc.; Notice of Petition for Declaratory Order

August 29, 1995.

Take notice that on August 23, 1995, Shell Offshore Inc. (Shell), P.O. Box 576, Houston, Texas 77001, filed a petition for declaratory order in Docket No. CP95–705–000 requesting that the Commission declare that, following Shell's purchase of certain offshore facilities from Natural Gas Pipeline Company of America (Natural), that those facilities are gathering facilities exempt from the Commission's Regulations pursuant to Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Shell states that the facilities consist of currently-certificated interstate transmission facilities owned by Natural along with associated metering facilities. It is indicated that the facilities consist of (1) 2.8 miles of 8-inch pipeline that extends between Shell's ''A'' and ''B'' platforms in Eugene Island Block 331, offshore Louisiana, (2) a dual 8-inch meter and appurtenant facilities located on Shell's ''A'' platform in Eugene Island Block 331, offshore Louisiana, (3) a 10-inch dual meter and appurtenant facilities located on Shell's platform in Vermilion Block 321, offshore Louisiana, (4) a dual 6-inch meter and appurtenant facilities located on Shell's platform in Vermilion Block 340, offshore Louisiana, and (5) a dual 8-inch meter and appurtenant facilities located on Shell's platform in West Cameron Block 565, offshore Louisiana.

Shell asserts that once it acquires the facilities their primary function will be gathering as set forth in *Farmland Industries, Inc.,* 23 FERC ¶ 61,063 (1983), as later modified by *Amerada Hess Corp., et al.,* 52 FERC ¶ 61,268 (1990), (*Amerada Hess*). It is indicated that under that test the Commission applies six criteria to determine the jurisdictional status of a facility: (1) the diameter and length of a facility; (2) the extension of facilities beyond a central point in the field; (3) the geographic configuration of the system; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facility; and (6) the operating pressure of the line. In *Amerada Hess,* the Commission indicated that it would consider other factors, in addition to the *Farmland* criteria, especially for offshore facilities, including the changing technical and geographic nature of exploration and production, the purpose, location and operation of the facility, the general business activity of the facility, and whether the jurisdictional determination is consistent with the objectives of the Natural Gas Act and the Natural Gas Policy Act of 1978. Shell also points out that an application of the non-physical factors set out in *Amerada Hess* demonstrates that the facilities should be classified as gathering facilities.

Shell asserts that the acquired facilities will perform gathering functions. Lateral line 331 is relatively short length and small diameter, as is characteristic of traditional offshore gathering lines. It is stated that, the geographic configuration of Lateral 331 is ''intrafield'' a gathering line feeding production from one platform in one portion of the offshore block to another platform in another portion of the same offshore block, where the production can be measured and delivered to an interstate pipeline for transportation to shore. It is further stated that, Lateral 331 is located entirely behind the onshore processing plants, in federal offshore waters. Shell indicates that, Lateral 331 will be owned by a producer and will be used by the producer to gather production from one of its production platforms to another. Shell avers that, the proposed new owner of Lateral 331 is primarily engaged in exploration and production activities and will use the facilities in furtherance of its exploration and production activities to gather production. It is indicated that, the measurement facilities to be acquired are located on four of Shell's production platforms, and will be used by Shell to measure the volume of gas produced and collected at each of the four platforms prior to delivery to the pipeline company for transportation, thus performing a production related function.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 19, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21874 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2444–002 Wisconsin]

Northern States Power Company-Wisconsin; Notice of Availability of Final Environmental Assessment

August 29, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the White River Hydroelectric Project, located in Ashland County, Wisconsin, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch,

Room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21867 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5291–7]

Underground Injection Control Program; Hazardous Waste Land Disposal Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Well, Monsanto Chemical Company

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on exemption reissuance.

SUMMARY: Notice is hereby given that a Petition for reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Monsanto Chemical Company, for the Class I injection wells located at the Alvin, Texas facility. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Monsanto Chemical Company of the specific restricted hazardous waste identified in the petition for reissuance, into the Class I hazardous waste injection wells at the Alvin, Texas facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued on June 14, 1995. The public comment period ended on July 31, 1995. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of August 17, 1995.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Phil Dellinger, Unit Leader, Ground Water/UIC, EPA—Region 6, telephone (214) 665–7142.

Oscar Ramirez, Jr.,

Acting Director, Water Quality Protection Division (6WQ).

[FR Doc. 95–21942 Filed 9–1–95; 8:45 am]

BILLING CODE 6565–50–P

[FRL–5291–6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection—BASF Corporation (BASF)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to BASF, for the Class I injection wells located at Freeport, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows BASF, to inject specific restricted hazardous wastes identified in the exemption, into the Class I hazardous waste injection wells at the Freeport, Texas facility, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued June 22, 1995. The public comment period ended on August 7, 1995. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of August 17, 1995.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Phil Dellinger, Unit Leader Ground Water/UIC, EPA—Region 6, telephone (214) 665–7142.

William B. Hathaway,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 95–21941 Filed 9–1–95; 8:45 am]

BILLING CODE 6565–50–P

[FRL–52909]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Computers and Electronics Section Subcommittee—Open Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Computers and Electronics Subcommittee of the Common Sense Initiative Council will meet on the dates and times described below. All times noted are Eastern Time. The meeting is open to the public. Seating at the meeting will be on a first-come basis.

Computers and Electronics Subcommittee—September 27–28, 1995

The Common Sense Initiative Council, Computers and Electronics Subcommittee (CSIC–CES) is convening an open meeting on Wednesday, September 27, from 8:30 a.m. to 5 p.m., and Thursday, September 28, from 8:30 a.m. to 3 p.m., at the Radisson Barcelo Hotel, 2121 P Street, NW., Washington, DC 20037. The phone number of the hotel is (202) 293–3100.

The first day of the meeting will consist primarily of breakout sessions for subcommittee workgroups (Reporting and Information Access; Barriers to Pollution Prevention, Recycling and Product Stewardship; and Integrated and Sustainable Alternative Strategies for Electronics), reports to the full subcommittee from those workgroups, and discussion of administrative and procedural issues of interest to the full subcommittee. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

FURTHER INFORMATION: For further information concerning this meeting of the Computer and Electronics Subcommittee, please contact Gina Bushong, (202) 260–3797, FAX (202) 260–1096, or by mail at US EPA (7405), 401 M Street SW., Washington, DC 20460; Mark Mahoney, Region 1, US EPA (617) 565–1155; or David Jones, Region 9, US EPA, (415) 744–2266.

INSPECTION OF CSIC DOCUMENTS: Documents relating to the above Sector Subcommittee announcement will be publicly available at the meeting. Thereafter, these documents, together with the CSIC–CES meeting minutes, will be available for public inspection in room 2417 Mall of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street SW., Washington, DC 20460, phone (202) 260–7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.epa.gov.

Dated: August 22, 1995.

Gina Bushong,

Designated Federal Official.

[FR Doc. 95–21939 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5289–8]

Proposed Settlement Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA''), Region II, announces a proposed administrative settlement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), relating to the Muratti Environmental Superfund Site (''Site''). The Site is located in the town of Penuelas, Tallaboa Ward, Commonwealth of Puerto Rico. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. The proposed administrative settlement has been memorialized in an Administrative Order on Consent (''Order'') between EPA and twelve settling parties (''Respondents''). This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate, and EPA, in accordance with Section 122(i)(3) of CERCLA, modifies or withdraws its consent to this Agreement. Under the Order, the Respondents will be obligated to pay an aggregate of $525,000 to the Hazardous Substance Superfund in reimbursement of EPA's response costs relating to the Site.

Pursuant to CERCLA Section 122(h)(1), the Order may not be issued without the prior written approval of the Attorney General or her designee. In accordance with that requirement, the Attorney General or her designee has approved the proposed administrative order in writing.

EPA intends to settle with other potentially responsible parties concerning reimbursement of EPA's remaining response costs.

DATE: Comments must be provided on or before October 5, 1995.

ADDRESS: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: ''Muratti Environmental Superfund Site, U.S. EPA Index No. II CERCLA–94–0301''. For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Jean H. Regna, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3164.

Dated: August 10, 1995.

Conrad Simon,

Acting Regional Administrator.

[FR Doc. 95–21940 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

August 28, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. You are not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0169.

Expiration Date: 08/31/98.

Title: Sections 43.51 and 43.53 - Reports and Records of Communications Common Carriers and Certain Affiliates.

Estimated Annual Burden: 6,029 total annual hours; 16.12 hours per response; 71 respondents.

Description: Sections 211 and 215 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 211 and 215 require that the FCC examine transactions of any common carriers relating to the activities of that carrier which may affect the charges and/or services rendered under the Act. The reports required by Sections 43.51 and 43.53 are the means by which the FCC gathers information concerning the activities of carriers which it examines. The information is used by the FCC to determine whether the activities reported have affected or are likely to affect adversely the carrier's service to the public or whether these activities result in undue or unreasonable increases in changes.

OMB Control No.: 3060–0643.

Expiration Date: 08/31/98.

Title: Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes.

Estimated Annual Burden: 50,000 total annual hours; 5000 hours per response; 10 respondents.

Description: Section 151, 154, 201–205, 218–220 and 403 of the Communications Act of 1934, as amended, provide the Commission with authority to prescribe an interstate rate of return. The prescribed rate of return must reflect a proper balance of regulatory goals by allowing a carrier ''to maintain its credit and to attract capital'' and by ensuring that ratepayers are charged reasonable rates for interstate access services. Part 65 of the Commission's rules set forth the procedures and methodologies for prescribing and enforcing the rate of return certain local exchange carriers (LECs) may earn on interstate access service. In the Report and Order issued in CC Docket No. 92–133, the Commission reformed its rules. Specifically, the Order replaces the existing rule, which initiates represcription proceedings biennially, with a semiautomatic trigger activated by changes in capital costs; modifies the paper hearing rules set out in Part 65; streamlines the methodologies used to

estimate the cost of capital; and removes the automatic refund rule.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–21906 Filed 9–1–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL HOUSING FINANCE BOARD

[No. 95–9]

Privacy Act of 1974; Systems of Records

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the Privacy Act, the Federal Housing Finance Board (Finance Board) is publishing a notice of its systems of records.

DATES: The Finance Board invites interested parties to submit comments on the proposed routine uses of the systems of records described in this notice on or before October 5, 1995. The systems of records described in this notice will be effective 30 days from the date of publication unless the Finance Board receives comments on the routine uses that would result in a contrary determination.

ADDRESSES: Please submit comments to: Executive Secretariat, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: David A. Guy, Associate General Counsel, Office of General Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), the Finance Board is publishing a notice of the existence and character of its systems of records maintained on individuals. As further described below, the Finance Board maintains the following systems of records:

FHFB–1 Employee Attendance Records
FHFB–2 General Travel and Transportation Files
FHFB–3 Administrative Grievance Files
FHFB–4 Federal Home Loan Bank Directors Financial Disclosure Records
FHFB–5 Finance Board Director Financial Disclosure Records
FHFB–6 Board of Directors
FHFB–7 Agency Personnel Investigative Records

In addition, the Finance Board intends to adopt the previously published **Federal Register** notices of the existence and character of the following governmentwide systems of records established by the Office of Personnel Management (OPM), the Office of Government Ethics (OGE), and the Equal Employment Opportunity Commission (EEOC):

OPM/GOVT–1 General Personnel Records
OPM/GOVT–2 Employee Performance File System Records
OPM/GOVT–3 Records of Adverse Actions, Performance-Based Reduction in Grade and Removal Actions, and Termination of Probationers
OPM/GOVT–5 Recruiting, Examining, and Placement Records
OGE/GOVT–1 Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records
OGE/GOVT–2 Confidential Statements of Employment and Financial Interests
EEOC/GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeals Records

These governmentwide systems of records include records that are in the temporary custody of the Finance Board, but which are owned by the OPM, the EEOC, or the OGE, respectively. Since the OPM, the OGE, and the EEOC have published notices in the **Federal Register** of the existence and character of these systems of records, it is unnecessarily duplicative for the Finance Board to include a description of these systems of records in its **Federal Register** notice.

Individuals are referred to the OPM's **Federal Register** notice of the existence and character of OPM/GOVT–1, OPM/GOVT–2, OPM/GOVT–3, and OPM/GOVT–5. The citation is 57 FR 35705–35716, August 10, 1992, as amended from time to time.

Individuals are referred to the OGE's **Federal Register** notice of the existence and character of OGE/GOVT–1 and OGE/GOVT–2. The citation is 55 FR 6328–6331, February 22, 1990, as amended from time to time.

Individuals are referred to the EEOC's **Federal Register** notice on the existence and character of EEOC/GOVT–1. The citation is 59 FR 11068, March 9, 1994, as amended from time to time.

FHFB–1

SYSTEM NAME:

Employee Attendance Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Finance Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of: (1) Time and attendance sheets showing employee attendance for two-week pay periods and the amount of leave used; and (2) employee applications for leave.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1422b(b)(1).

PURPOSES:

Records are used for management and payroll purposes for approval and documentation of employees' attendance and use of leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records, or information therefrom, may be disclosed as a routine use to:

1. Finance Board personnel having a need for access to perform their official functions.
2. Another federal agency for payroll purposes.
3. The Department of Labor when processing a claim for compensation regarding a job connected injury or illness.
4. A state unemployment compensation office regarding a claim.
5. The appropriate agency, whether federal, state, or local, where there is an indication of a violation, or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or implementing the statute, rule, regulation, or order issued pursuant thereto.
6. The appropriate person in the event that information in the record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal.
7. The OPM or the General Accounting Office (GAO) when the information is required for evaluation of leave administration.
8. The General Services Administration in connection with its responsibilities for records management.
9. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Office of Human Resources, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendment of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual and Finance Board employees who approve leave applications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFB–2

SYSTEM NAME:

General Travel and Transportation Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Finance Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of travel vouchers, petty cash forms, and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1422b(a)(3), 41 CFR part 101–41.

PURPOSES:

Records document payment for travel expenses of Finance Board employees incurred in the performance of their official functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records, or information therefrom, may be disclosed as a routine use to:

1. Finance Board personnel having a need for access to perform their official functions.
2. Internal agency auditors and auditors of the GAO.
3. The appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting a violation or potential violation of law or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto, in the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto.
4. The appropriate person in the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal.
5. A federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.
6. A federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
7. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file folders.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Office of Human Resources, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFB–3

SYSTEM NAME:

Administrative Grievance Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Finance Board employees who have filed a grievance pursuant to the agency's administrative grievance procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain documents related to the grievances, including the written grievance filed by the employee, statements of witnesses, records, the report of a hearing if one is held, the report of a fact finder when fact-finding is used, statements made by the parties to the grievance, and the agency's decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 771.

PURPOSES:

Records document grievance proceedings brought pursuant to the Finance Board's administrative grievance procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records, or information therefrom, may be disclosed as a routine use:

1. To Finance Board personnel having a need for access to perform their official functions.

2. In litigation to respond to process issued under authority of a court of competent jurisdiction and to parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the Finance Board's administrative grievance procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

3. To request information from a federal, state, or local agency or private individual if necessary to obtain information relevant to a Finance Board decision within the purposes of this system of records.

4. To the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting a violation or potential violation of law or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto, in the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto.

5. A federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

6. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file folders.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are destroyed five years after closure of a case.

SYSTEM MANAGER AND ADDRESS:

Personnel Security Officer, Office of Human Resources, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual, Finance Board personnel records, and statements and testimony of witnesses and related correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFB–4

SYSTEM NAME:

Federal Home Loan Bank Directors Financial Disclosure Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the boards of directors of the 12 Federal Home Loan Banks (Banks).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain: (1) Information describing the financial relationships, as defined in 12 CFR 931.30, of current and former members of the boards of directors of the Banks; and (2) certifications of eligibility by current and former members of the boards of directors of the Banks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1427(a), (b), (d).

PURPOSES:

Records are collected to determine whether Bank directors are in compliance with applicable statutory and regulatory eligibility requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records, or information therefrom, may be disclosed as a routine use to Finance Board personnel having a need for access to perform their official functions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file folders.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are retained for three years or until the subject individual leaves office as a FHLBank director, whichever is longer.

SYSTEM MANAGER AND ADDRESS:

Associate Director, District Banks Secretariat, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendment of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFB–5

SYSTEM NAME:

Finance Board Director Financial Disclosure Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the Board of Directors of the Finance Board.

CATEGORIES OF RECORDS IN THE SYSTEM: RECORDS CONTAIN: (1) INFORMATION DESCRIBING THE FINANCIAL RELATIONSHIPS, AS DEFINED IN 12 CFR 931.30, OF CURRENT AND FORMER FINANCE BOARD DIRECTORS; AND (2) CERTIFICATIONS OF ELIGIBILITY BY CURRENT AND FORMER FINANCE BOARD DIRECTORS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1422a(b)(2)(C).

PURPOSES:

Records are collected to determine whether Finance Board Directors are in compliance with applicable statutory and regulatory eligibility requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records, or information therefrom, may be disclosed as a routine use to Finance Board personnel having a need for access to perform their official functions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file jackets.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Records are stored in a safe secured by a combination lock. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are retained for seven years and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Designated Agency Ethics Official, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendment of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. FHFB–6

SYSTEM NAME:

Board of Directors.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the Board of Directors of the Finance Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain photographs and biographies of current and former members of the Board of Directors of the Finance Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1422a(b)(1).

PURPOSES:

Records are used to provide information to the press and other interested persons or agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records, or information therefrom, may be disclosed as a routine use to:

1. The press and other interested persons or agencies.

2. Finance Board personnel having a need for access to perform their official functions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file jackets.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access is limited to Finance Board personnel having a

need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are transferred to the National Archives two years after a Finance Board Director leaves office.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Public Affairs, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendment of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFB–7

SYSTEM NAME:

Agency Personnel Investigative Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Finance Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain information relating to the subject individual, including name, address, date and place of birth, Social Security number, citizenship, residence, foreign travel and contacts, education, personal references, organizational membership and security clearance history, reports from commercial credit agencies, and personal security investigative reports from either the OPM or the Federal Bureau of Investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 5 CFR parts 5, 731, 736, E.O. 10577.

PURPOSE:

Records are collected in order to make a determination as to the suitability of the subject individual for federal employment. The records are maintained in order to provide documentation, if necessary, to OPM in order to support the Finance Board's determination of the suitability of the subject individual for federal employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records, or information therefrom, may be disclosed as a routine use to:

1. Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the federal government, having a need to evaluate qualifications, suitability, and loyalty to the United States government and/or a security clearance or access determination.

2. Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the federal government, and the District of Columbia government, when such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States government, or access to classified information or restricted areas.

3. Designated officers and employees of agencies, offices, and other establishments in the executive, judicial, or legislative branches of the federal government, having the responsibility to grant clearances, to make determination regarding access to classified information or restricted areas, or to evaluated qualifications, suitability, or loyalty to the United States government, in connection with performance of a service to the federal government under a contract or other agreement.

4. Intelligence agencies for use in intelligence activities;

5. Any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

6. The federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation.

7. An agency, office or other establishment in the executive, legislative, or judicial branches of the federal government, or the District of Columbia government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency.

8. Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

9. A congressional office in response to an inquiry made at the request of that individual.

10. In litigation before a court or in an administrative proceeding being conducted by a federal agency.

11. The National Archives and Records Administration for records management inspections.

12. The Office of Management and Budget in connection with private relief legislation.

13. Respond to a request for discovery or for appearance of a witness.

14. The Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, in connection with functions vested in those agencies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are contained in file jackets and stored in a safe secured by a combination lock.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Records are in the custody of the Personnel Security Officer and are maintained in a safe secured by a combination lock. The room where the records are stored is locked when not in use.

RETENTION AND DISPOSAL:

Records are retained until the subject individual terminates employment at the Finance Board, at which time the records are sent to the OPM.

SYSTEM MANAGER AND ADDRESS:

Personnel Security Officer, Office of Human Resources, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to the Office of Personnel Management, Federal Investigations Processing Center, FOI/PA, Boyers, Pennsylvania 16018.

CONTESTING RECORD PROCEDURES:

Requests for amendment of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

Subject individual; police, military, or naval reports; former employees; and references supplied to the Personnel Security Officer by the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this system are exempt from disclosure, pursuant to the provisions 5 U.S.C. 552a(k)(5), to the extent that disclosure would reveal the identity of a source who furnished information to the government under an express promise that the identification of the source would be held in confidence, or, prior to September 1, 1975, under an implied promise that the identity of the source would be held in confidence.

Dated: August 28, 1995.

By the Federal Housing Finance Board.

Rita I. Fair,

Managing Director.

[FR Doc. 95–21849 Filed 9–1–95; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Crestar Financial Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

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 September 18, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Crestar Financial Corporation, Richmond, Virginia; to merge with Loyola Capital Corporation, Baltimore, Maryland, and thereby indirectly acquire Loyola Federal Savings Bank, Baltimore, Maryland, and thereby engage in mortgage origination, mortgage servicing, real estate appraisal, investment counseling and securities brokerage services, insurance brokerage services, and the traditional activities of a federal savings bank, pursuant to §§ 225.25(b)(1), (b)(13), (b)(4), (b)(15), (b)(8)(vii), and (b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Carroll County Bancshares, Inc., Carroll, Iowa; to acquire Carroll Credit, Inc., Carroll, Iowa, and thereby engage in owning and operating a finance company, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Castle Rock Bank Holding Company, Castle Rock, Colorado; to acquire Colorado Imaging Company, Inc., Castle Rock, Colorado, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 29, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-21894 Filed 9-1-95; 8:45 am]

BILLING CODE 6210–01–F

First Bank System, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must

include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 20, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; to merge with Midwestern Services, Inc., Omaha, Nebraska, and thereby indirectly acquire First Bank, Omaha, Nebraska.

2. First Bank System, Inc., Minneapolis, Minnesota; to merge with Southwest Holdings, Inc., Omaha, Nebraska, and thereby indirectly acquire Southwest Bank and Trust Company of Omaha, Omaha, Nebraska.

In connection with this application, Applicant also has applied to acquire SWH & K Partnership, Omaha, Nebraska, and thereby engage in reinsurance of credit life and disability insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. The geographic scope for these activities is Nebraska.

In connection with both applications described above, Applicant also has applied to acquire FBS Interim Bank, FSB, Omaha, Nebraska, and thereby engage in operating a thrift subsidiary, pursuant to § 225.25(b)(9) of the Board's Regulation Y. This interim thrift will be used to facilitate the purchase of First Bank, Omaha, Nebraska and Southwest Bank and Trust Company of Omaha, Omaha, Nebraska. After these acquisitions, the thrift will be merged into a newly chartered national bank and will cease to exist. The geographic scope for these activities is Nebraska.

Board of Governors of the Federal Reserve System, August 29, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–21895 Filed 9–1–95; 8:45 am]

BILLING CODE 6210–01–F

Lenox Bancorp, Inc., 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 September 28, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Lenox Bancorp, Inc., St. Bernard, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Lenox Savings Bank, St. Bernard, Ohio.

2. Peoples of Fleming County Bancorp, Inc., Flemingsburg, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank of Fleming County, Flemingsburg, Kentucky.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Milton Bancshares, Inc., Milton, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Milton, Milton, Wisconsin.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Hoeme Family Partnership, Scott City, Kansas; to acquire an additional 1.05 percent, for a total of 35.49 percent, of the voting shares of First National Bancshares of Scott City, Ltd., Scott City, Kansas, and thereby indirectly acquire First National Bank of Scott City, Scott City, Kansas.

Board of Governors of the Federal Reserve System, August 29, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–21896 Filed 9–1–95; 8:45 am]

BILLING CODE 6210–01–F

NBD Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these 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 September 29, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., Detroit Michigan (NBD Bancorp); to acquire First Chicago Corporation, Chicago,

Illinois, and American National Corporation, Chicago, Illinois, and thereby indirectly acquire First National Bank of Chicago, Chicago, Illinois, FCC National Bank, Wilmington, Delaware, and American National Bank & Trust Company, Chicago, Illinois.

In connection with this application, NBD Bancorp also has applied to acquire ANB Mezzanine Corporation, Chicago, Illinois, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Cash Station, Inc., Chicago, Illinois, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y; First Capital Corporation of Chicago, Chicago, Illinois, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y; First Chicago Capital Markets, Inc., Chicago, Illinois, and thereby engage in providing financial and transaction advice, in providing full-service securities brokerage services, and in underwriting and dealing in securities that state member banks are permitted to underwrite and deal in, pursuant to § 225.25(b)(4), (15), and (16), as well as the following: underwriting and dealing, to a limited extent, in certain debt securities that a state member bank may not underwrite or deal in, purchasing and selling securities as a ''riskless principal,'' and acting as an agent in the private placement of securities, all pursuant to *First Chicago Corporation*, 74 Federal Reserve Bulletin 706 (1988) and *First Chicago Corporation*, 80 Federal Reserve Bulletin 448 (1994); *First Chicago Investment Corporation*, Chicago, Illinois, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y; First Chicago Lease Holding, Inc., Chicago, Illinois, and thereby engage in commercial leasing activities, pursuant to § 225.25(b)(5) of the Board's Regulation Y; First Chicago Leasing Corporation, Chicago, Illinois, and thereby engage in making, acquiring, and servicing loans, or other extensions of credit, commercial leasing activities, and community development activities, pursuant to § 225.25(b)(1), (5), and (6) of the Board's Regulation Y; First Chicago Realty Corporation, Chicago, Illinois, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Palo Verde Lease Holdings, Inc., Chicago, Illinois, and thereby engage in commercial leasing activities, pursuant to § 225.25(b)(5) of the Board's Regulation Y; First Chicago Trust Company of New York, New York, New York, and thereby engage in performing functions and activities that may be performed by a trust company, pursuant to § 225.25(b)(3); and G-W Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting credit life, accident and health insurance related to certain extensions of credit, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

NBD Bancorp, Inc., also has applied to exercise an option to acquire up to 19.9 percent of the voting shares of First Chicago Corporation, and American National Corporation, both of Chicago, Illinois.

In addition, First Chicago Corporation, Chicago, Illinois (First Chicago), has applied to exercise an option to acquire up to 19.9 percent of the voting shares of NBD Bancorp, Inc., Detroit, Michigan, NBD Indiana, Inc., Indianapolis, Indiana, and NBD Illinois, Inc., Park Ridge, Illinois, and thereby acquire NBD Bank, Detroit, Michigan, NBD Bank, N.A., Indianapolis, Indiana, NBD Bank, Elkhart, Indiana, NBD Bank, Wheaton, Illinois, NBD Bank, N.A., Skokie, Illinois, NBD Bank, Columbus, Ohio, and National Bank of Detroit-Dearborn, Dearborn, Michigan.

In connection with this application, First Chicago also has applied to acquire NBD Bank, FSB, Venice, Florida, and Deerfield Federal Savings & Loan Association, Deerfield, Illinois, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of Regulation Y; ML Inc., Detroit, Michigan, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y; NBD Insurance Agency, Inc., Detroit, Michigan, and thereby engage in insurance agency activities related to extensions of credit, pursuant to § 225.25(b)(8)(i) of Regulation Y; NBD Insurance Company, Detroit, Michigan, and thereby engage in insurance agency activities related to extensions of credit, pursuant to § 225.25(b)(8)(i) of Regulation Y; BHC Financial, Inc., Philadelphia, Pennsylvania, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15); NBD Mortgage Company, Detroit, Michigan, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of Regulation Y; NBD Service Corporation, Belleville, Michigan, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y; NBD Securities, Inc., Detroit, Michigan, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y; FNW Capital, Inc., Mount Prospect, Illinois, and thereby engage in commercial leasing, pursuant to § 225.25(b)(5) of Regulation Y; NBD Community Development Corporation, Detroit, Michigan, and thereby engage in community development activities, pursuant to § 225.25(b)(6) of Regulation Y; NBD Financial Services of Michigan, Inc., Traverse City, Michigan, and thereby engage in providing investment or financial advice, pursuant to § 225.25(b)(4) of Regulation Y; NBD Brokerage Services, Inc., Indianapolis, Indiana, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y; Charter Agency, Incorporated, Northfield, Illinois, and thereby engage in insurance agency activities, pursuant to § 225.25(b)(8) of Regulation Y; Corporate Funding Inc., Grand Rapids, Michigan, and thereby engage in commercial leasing, pursuant to § 225.25(b)(5) of Regulation Y; NBD Leasing, Inc., Indianapolis, Indiana, and thereby engage in commercial leasing, pursuant to § 225.25(b)(5) of Regulation Y; NBD Neighborhood Revitalization Corporation, Indianapolis, Indiana, and thereby engage in community development activities, pursuant to § 225.25(b)(6) of Regulation Y; and NBD Real Estate Services, Indianapolis, Indiana, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, leasing real property, insurance agency activities related to extensions of credit, management consulting, and real estate appraising, pursuant to § 225.25(b)(1), (5), (8), (11), and (13) of Regulation Y.

Board of Governors of the Federal Reserve System, August 30, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-21981 Filed 9-1-95; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Public Hearing

AGENCY: General Accounting Office.

ACTION: Notice of public hearing.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that a public hearing of the Federal Accounting Standards Advisory Board will be held on Wednesday, September 20, 1995 from 9 a.m. to 4 p.m. in room 7C13 of

the General Accounting Office, 441 G Street NW., Washington, DC.

The purpose of the hearing is to hear testimony from interested parties on the *Accounting for Revenue and Other Financing Sources* exposure draft, issued in July 1995.

Any interested person may attend the hearing as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First Street NE., Room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, sec. 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: August 29, 1995.

Ronald S. Young,

Executive Director.

[FR Doc. 95–21851 Filed 9–1–95; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review; Proposed Information Collection Submitted for Public Comment and Recommendations

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Administration for Children and Families (ACF) is publishing the following summary(ies). To request copies of the proposed collection of information write to The Administration for Children and Families, Office of Information Systems, 370 L'Enfant Promenade SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Proposed Project(s):

Title: National Study of Outcomes for Children Placed in Foster Care with Relatives.

OMB No.: New Request.

Description: This is a series of interview forms for use with state administrators, case workers, and foster parents in seven states selected for the study. State administrators are the Chief Child Welfare Administrator, the fiscal administrator, and management information system specialist in each state. The National Study of outcomes for Children Placed in Foster Care with Relatives will be used to describe policies, practices and characteristics regarding placement of children in foster care with relatives; to describe outcomes of children placed in foster care with relatives compared to children placed in non-relative foster care; and to examine the associated costs of relative foster care compared to non-relative foster care.

Respondents: State governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
Administrator Interview	7	1	1	7
Casework Interview	140	1	1	140
Foster Parent Interview	280	1	.75	210
Demographic Information Report	7	1	.5	3.5
Fiscal Information Report	7	.5	3.5	3.5

Estimated Total Annual Burden Hours: 364.

Dated: August 29, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–21861 Filed 9–1–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

The National Center for Environmental Health Meeting: Change of Location

Federal Register Citation of Previous Announcement: 60 FR 42169—dated August 15, 1995.

SUMMARY: Notice is given that the meeting location for the National Center for Environmental Health (NCEH), of the Centers for Disease Control and Prevention (CDC), together with cosponsors, the European Commission, the Agency for Toxic Substances and Disease Registry (ATSDR), the National Institute of Diabetes, Digestive, and Kidney Diseases (NIDDK), the National Institute of Environmental Health Sciences (NIEHS), and the Oregon Health Sciences University Foundation has changed. The meeting times, dates, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

ORIGINAL LOCATION: Terrace Garden Inn-Buckhead, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

NEW LOCATION: The Marque of Atlanta, Perimeter Center, 111 Perimeter Center West, Atlanta, Georgia 30346.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Mueller, Ph.D., Chief, Health Effects Laboratory (F50), Molecular Biology Branch, Division of Environmental Health Laboratory Sciences, NCEH, CDC, 4770 Buford Highway NE., Atlanta, Georgia 30341–3724, telephone 404/488–7983.

Dated: August 28, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–21887 Filed 9–1–95; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–3917–N–19]

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 the information and its proposed use; (4) the agency form number if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 18, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Letter of Transmittal/Servicing Agreement/Resolution of Borad Director and Certificate of Authorized Signatures

Office: Government National Mortgage Association

Description of the Need for the Information and its Proposed Use: Form HUD–11700, Letter of Transmittal, is used by issuers to transmit to GNMA required materials to request approval of all applications to become a mortgage-backed securities issuer. Form HUD–11702, Resolution of Board of Directors and Certificate of Authorized Signatures, is used to provide GNMA with names and signatures of the Board of Directors of the issuer's organization. Form HUD–11707, Servicing Agreement, is used by the issuer to provide assurance to GNMA that servicing of the mortgages backing the securities will be performed at an acceptable standard.

Form Number: HUD–11700, 11702 and 17707

Respondents: Business or Other For-Profit

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11700	900		6		.17		918
HUD–11702	900		1		.17		160
HUD–11707	900		34		.17		5,222

Total Estimated Burden Hours: 6,300

Status: Extension with changes

Contact: Brenda Countee, HUD, (202) 708–2234; Joseph F. Lackey, Jr., OMB (202) 395–7316.

Dated: August 18, 1995.

[FR Doc. 95–21859 Filed 9–1–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3917–N–20]

Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: Comments due: November 6, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 4240, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202)–708–0846, (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of

information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Statement of Voucher for Basic Annual Contribution—Leased Housing

OMB Control Number, if applicable: 2577–0061. Description of the need for the information and proposed use: This form is needed to provide essential financial information on the operations of PHAs, which is used for multiple purposes by HUD including identification of debts owed to the Department.

Agency form numbers, if applicable: HUD–52981.

Members of affected public: State, Local or Tribal Government Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 125 respondents, annually, .88 hours per response, 110 hours for a total reporting burden.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 29, 1995.

Michael B. Janis,

General Deputy.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–21860 Filed 9–1–95; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision; Final Environmental Impact Statement/General Management Plan; Grand Canyon National Park; Coconino and Mohave Counties, AZ

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, has prepared a Record of Decision on the Final Environmental Impact Statement/General Management Plan for Grand Canyon National Park, Coconino and Mohave Counties, Arizona. This Record of Decision is a concise statement of what decisions were made, what alternatives were considered, the basis for the decision, and the mitigating measures developed to avoid or minimize environmental impacts.

Decision: The National Park Service will implement the proposed general management plan for Grand Canyon National Park, as detailed in Alternative 2 of the Final General Management Plan and Environmental Impact Statement issued in July 1995. The draft plan and environmental impact statement was issued in March 1995. The proposal is described below as the Selected Action.

Selected Action: The selected action is a comprehensive proposal for future management and use of the park, including a regional, ecosystem planning focus, park management zones, visitor experience, expanded provision of alternative visitor transportation services, interpretation planning, park operations, and park facilities development.

Summary of Actions: The regional context of Grand Canyon National Park will be emphasized, and proposals for resource preservation and visitor use will take into account environmental effects on the park as well as the region. Planning outside the park will be done cooperatively, with an emphasis on disseminating information, preserving regional and park resources, and providing a quality visitor experience. The National Park Service will work jointly with adjacent entities to provide for many park needs outside park boundaries. A gateway information center, some community services, and up to 500 employee housing units will be provided in Tusayan. The most appropriate locations for facilities will be considered in a regional context, taking into consideration principles of sustainable design and the need to preserve resources while providing for a quality visitor experience.

Alternative modes of transportation (public transit, hiking, and biking) will be emphasized within the park. A primary orientation center and public transit hub will be constructed near Mather Point. From there several shuttle routes will provide efficient and quiet visitor transportation to Grand Canyon Village and other points on the South Rim. Visitor parking and a shuttle system will also be established on the North Rim.

To minimize impacts on natural and cultural resources within the park, existing structures will be adaptively reused, and required new facilities will be built in previously disturbed areas wherever possible. The Kachina and Thunderbird lodges will be removed and the number and size of gift shops on the South Rim will be reduced. The RV campground and the existing helicopter base will be redesigned. Some disturbed areas will be revegetated.

To ensure a quality experience, the number of visitors admitted to certain areas will be limited during peak visitation periods based on recommendations derived from a carrying capacity monitoring program. The methodology for determining use limits will be the same throughout the developed areas of the park; however, visitor use limits for specific areas will vary considerably, and visitor use may be limited sooner in some areas than in others. Day use on the South Rim and the corridor trails will not need to be limited during the life of this plan, provided the recommended alternative visitor transportation services are fully funded and operational; day visitation on the North Rim will be limited by the year 2005 or 2010, depending on the effectiveness of management actions; and day use at Tuweep may be limited during peak times. In areas where reservations become necessary, visitors will be able to obtain reservations ahead of time (their reservations will be checked at park entrances). A monitoring system will be established to measure resource impacts, facility use, visitor satisfaction, and levels of visitor attendance in each park developed area. The reservation system will be adjusted as needed.

Summary of Impacts: A stable situation for the future will be provided for all the developed areas of the park, significantly improving management's ability to preserve and protect the natural and cultural resources, provide a high-quality visitor experience, and ensure quality living and operating conditions for park employees. Most development will in-fill on already disturbed areas. Historic structures will be adaptively reused, resource damage will be minimized, and local economies will be enhanced. Sustainable planning, design, and implementation will be encouraged within a regional context.

Alternatives Considered

No-Action Alternative—Existing Conditions / Ongoing Programs

Summary of Actions: Unlimited day visitation would continue in all park developed areas, with nearly every visitor facility in developed areas of the South Rim continuing to be

overcapacity during peak use periods. No major facilities would be built, and no major park functions would be relocated. Any required facility changes would be done in or adjacent to existing disturbed areas. The number of overnight accommodations, campsites, and all other visitor services remain the same in each developed area. Minor adjustments in management would be made to help reduce resource damage and to provide a safer visitor experience. Planning would be focused inside the park, primarily to solve existing problems. Issues related to planning and land management practices in areas immediately outside the park would be handled individually as the need arose, without an overall area vision or cooperative regional planning effort to guide the direction. Limited cooperative planning to distribute regional information to visitors would occur.

Summary of Impacts: Uncontrolled growth would continue within the park, with only limited improvements to visitor services. Damage to natural and cultural resources would continue to worsen, and the visitor experience would become degraded. Communication with visitors to help them plan their trip so they could have a quality experience in the park would continue to be minimal, resulting in negative experiences for park visitors. Extensive quantities of substandard housing would remain, along with an ever-increasing shortage of park housing, forcing more and more employees to find housing in adjacent areas, perhaps long distances from the workplace. The lack of operational space would become severe, reducing employee effectiveness. Over the long term the economy of the area could be damaged due to the worsening image of Grand Canyon National Park and the poor visitor experience.

Alternative 1—Minimum Requirements

Summary of Actions: Unlimited day visitation would continue in all developed areas of the park until visitor congestion, resource damage, and public safety warranted restricting access during peak visitation. This would be accomplished by implementing reservation systems based on the capacity of existing parking and eating facilities on the South and North Rims. Regional information programs would explain the park's reservation systems to visitors. Overnight accommodations would not be affected. Visitor use at Tuweep and on the corridor trails would not be limited under this alternative.

Existing land use patterns would be retained—no major facilities would be built, no major park functions would be relocated, and most park facilities would remain where they are now. A few minor facilities would be added. Any required facility changes would be done in or adjacent to existing disturbed areas. Planning would be focused inside the park, primarily to solve existing problems. Issues related to planning and land management practices in adjacent areas outside the park would be handled individually as the need arose, without an overall area vision or integrated regional planning effort to guide the direction.

Summary of Impacts: Park resource damage and a worsening visitor experience at Grand Canyon would be alleviated by limiting the number of people visiting developed areas on the North and South Rims at any one time. Tuweep would continue to experience uncontrolled use, possibly leading to deteriorated natural resources and a degraded visitor experience over the long term. Some impacted areas would be rehabilitated, helping to restore resources within the park. The visitor experience would improve compared to the no-action alternative because fewer people would be competing to use facilities. However, visitors would continue to be frustrated by not being able to easily find places they want to see. Information, orientation, and education about park themes would remain ineffective because of inadequate and poorly located facilities. Visitors would not be well distributed throughout the park, reducing the number of people who could enjoy the park at any one time, and more and more visitors would be turned away.

An increasing number of employees would not be able to live in the park, and many would have to find their own housing, often over an hour from the park. Housing in some developed areas would be improved, and the need for additional housing would be reduced by limiting visitation. Some improvements would occur outside the park due to NPS assistance to outside entities for regional visitor information. However, many park problems would fall to regional entities, for example, visitors parking outside the park and using private transit services to enter the park, disappointed visitors being turned away at the gate, and housing for park employees.

Alternative 3—Reduced Development Within the Park

Summary of Actions: Alternative 3 would emphasize the preservation of park resources by placing all new facilities and relocating many existing functions outside the park. Cooperative regional planning would ensure that NPS functions occurring outside park boundaries demonstrated environmentally sensitive planning and design. The National Park Service would expand its regional information services, as described for alternative 2. On the South Rim all day visitor vehicles would be removed, and a major public transit system would be provided. No new lands within the park would be disturbed, and historic uses of existing structures would be retained wherever possible. Overnight accommodations would be reduced on the South Rim but increased on the North Rim by adaptively reusing historic structures. Planning for the park would be done in a regional context to minimize negative impacts resulting from park uses being placed in areas outside the park. Communications would be expanded, as described for alternative 2. Wherever possible, facilities placed outside the park would be clustered in disturbed areas and linked to existing systems. Alternative modes of transportation would be emphasized regionally as well as in major high use areas of the park, the same as alternative 2.

Summary of Impacts: There would be an emphasis on preserving natural and cultural resources within the park, and many park disturbed areas would be rehabilitated. The visitor experience within the park would be highly controlled on the South Rim, and strict limitations of the number of visitors on the North Rim and at Tuweep would force many visitors to plan far in advance to experience those areas. Many more acres would be disturbed outside the park than any other alternative as a result of park-related facility development; services, housing, and operational facilities within the park would be limited. Many visitors would be inconvenienced since no private vehicles could be driven through the park.

Alternative 4—Increased Development Within the Park

Summary of Actions: Alternative 4 proposes actions to improve visitor convenience by placing major park visitor services inside the park wherever reasonable and by distributing visitors throughout the developed areas of the park. No day use limitations would be established unless the visitor experience was being significantly degraded. The type of vehicular use allowed in some areas would be restricted, and high use areas would be accessible only by transit vehicles or hiking or biking (the

same as alternative 2); other developed areas would be accessible by private vehicles. Overnight accommodations would be increased in all developed areas on the North and South Rims by constructing some new facilities and adaptively reusing existing structures. New facilities would be placed either in or adjacent to disturbed areas. Planning outside the park would emphasize regional information, as described for alternative 2. Cooperative planning with outside entities would focus on disseminating information, providing trip planning assistance, and distributing visitor use.

Summary of Impacts: Allowing all visitors to enter the park and developing facilities to accommodate their needs would result in continuing resource damage. This alternative would produce more resource impacts inside the park than any alternative and would set a precedent for continued resource impacts in the future. The greatest resource impacts would be caused by widening roads and developing additional parking. Visitor convenience would be significantly enhanced. Park operations and development would continue to expand to meet visitor demand. After 2010 the visions and management objectives for the developed areas might not be attainable due to the increases in facilities and visitors. Impacts to regional resources would increase over the long term as a result of growth inside and outside the park to meet visitor needs. Due to ever-increasing needs for park construction, new employee housing, and larger visitor facilities, the regional economy would continue to increase.

Basis for Decision: The selected action was formulated to address problems and management concerns related to the protection and preservation of natural and cultural resources, the provision of appropriate visitor experiences, and the fulfillment of identified management objectives. The management objectives reflect the park purpose, significance, and park area vision statements. They provide a standard against which progress on the implementation of the plan can be measured. The management zoning concept set forth in the March 1995 draft plan (and refined in the July 1995 final plan) is adopted, which will enhance management's ability to direct future park actions in specific areas within the context of an overall management philosophy.

The selected action also adopts the ongoing implementation plans within the park (for example, the Resource Management Plan, Backcountry Management Plan, Colorado River Management Plan, Fire Management Plan, and Land Protection Plan), and provides direction, through the management objectives, for future revisions of those plans. The selected action provides for a monitoring program that will provide an appropriate park management presence and an adjustable, sustainable carrying capacity for people and vehicles in developed areas within the park with minimal disturbance to park resources.

No protests or other comments were received on the final plan and environmental impact statement during the 30-day no action period that the document was available to the public.

Environmentally Preferred Alternative: Alternative 2 is the environmentally preferred alternative. It balances the statutory mission of the National Park Service to provide long-term resource preservation while still allowing for appropriate levels of visitor use and appropriate means or forms for visitor enjoyment. Within the range of alternatives presented in the plan, alternative 2 corrects the existing infrastructure deficiencies in the park and provides for the projected growth in visitation through the year 2010 by adaptive use of existing historical structures and provision of visitor transportation services other than private automobiles. A long-term monitoring program to determine appropriate use levels and carrying capacities within the developed areas of the park will be established to ensure protection of the natural and cultural resources of the park and to maintain a quality visitor experience.

Alternative 2 also provides the best combination of long- and short-term regional economic and community proposals that will favorably affect the tourism industry and communities in northern Arizona and southern Utah. An emphasis in alternative 2 is to promote economic development in surrounding communities by not providing all tourist related facilities inside the park.

Measures to Minimize Harm: All practicable measures to avoid or minimize environmental impacts that could result from implementation of the selected action have been identified and incorporated into the selected action. These include, but are not limited to, protection of viewsheds and wilderness values, and natural resources including the protection of populations of threatened plant species in the developed zone. As specific aspects of the selected action are further developed or implemented, the National Park Service will consult with the Fish and Wildlife Service regarding threatened or endangered species. Also impacts to the integrity of historic properties, ethnographic resources, and archeological sites will be avoided or minimized. A programmatic agreement has been signed by the Arizona State Historic Preservation Office, the Advisory Council on Historic Preservation, and the National Park Service which provides a framework for further consultation and discussion when implementing the selected action.

Conclusion: The above factors and considerations warrant selecting Alternative 2, identified as the proposed action in the draft document (and as modified in the final general management plan and environmental impact statement). Additional copies of the approved Record of Decision may be obtained from the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023. The officials responsible for implementing the selected action are the Field Director, Intermountain Field Area, National Park Service and the Superintendent, Grand Canyon National Park.

Approved: August 21, 1995.

Stanley T. Albright,

Field Director, Pacific West Field Area.

[FR Doc. 95–21964 Filed 9–1–95; 8:45 am]

BILLING CODE 4310–70–P

Interagency Desert Management Plan Northern and Eastern Mojave Desert Inyo and San Bernardino Counties, CA; Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with 40 CFR 1501.7 and 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act (Pub. L. 91–190), the National Park Service (NPS), Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (FWS) are initiating the preparation of a management plan and environmental impact statement for the Northern and Eastern Mojave Desert.

Background

The purposes of this interagency desert management plan are to guide protection, public use, and development of a 7.7 million acre region in parts of Inyo and San Bernardino counties of southern California. Once approved, the plan will provide broad guidance over the next two decades for management of federally owned lands in the Northern and Eastern Mojave Desert. The plan also will contain more detailed plans for two major units of the National Park System and for BLM lands. Specifically, the existing Death Valley general

management plan of 1988 will be amended, the first general management plan for Mojave National Preserve will be prepared, and management decisions for BLM wilderness areas will amend the California Desert Conservation Area Plan of 1980.

The principal issues proposed to be resolved through this planning effort include the following topics: Access to public lands; infrastructure necessary for managing these areas; habitat management, including the habitat of the threatened desert tortoise and other sensitive species; wilderness management; management of wild horses, burros, and alien/exotic plant and animal species; proposed expansion of Fort Irwin; visitor information facilities; recreational opportunities; mining activities and utility corridors.

The project will be conducted by an interagency, multidisciplinary planning team with offices in Barstow, California. Federal and state government agencies, as well as county and city officials, will be invited to consult with the team throughout the project process. Interested individuals and organizations will be able to participate during the planning process through a series of public meetings and review periods. The expected three year planning effort will commence immediately.

The public will be invited to workshops and open houses at three different stages of the project—scoping/issues identification, development of alternatives, and review of the draft and final documents. The first set of workshops, intended to listen to and record public input on the planning issues, will be held in late September, 1995, in Las Vegas, Nevada and in Baker, Barstow, Furnace Creek, Independence, Lone Pine, Needles, Pasadena, Ridgecrest, and San Bernardino in California. The team will also welcome any written comments during this scoping phase.

SUPPLEMENTARY INFORMATION: Requests for a map of the Northern and Eastern Mojave planning area, as well as comments and inquires about this project, should be directed to: Mr. Dennis Schramm, Planning Team Leader, National Park Service, Mojave National Preserve, 222 East Main Street, Suite 202, Barstow, CA 92311 [(619)255–8840].

Dated: August 22, 1995.

Stephen G. Crabtree,

Acting Field Director, Pacific West Field Area.

[FR Doc. 95–21965 Filed 9–1–95; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

[FES 95–30]

Josephine County Water Management Improvement, Fish Passage Improvements, Savage Rapids Dam, OR

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of planning report/final environmental statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, and the Reclamation Act of 1902, as amended, the Bureau of Reclamation has prepared a planning report/final environmental statement (PR/FES) on a proposed project to improve fish passage at Savage Rapids Dam located on the Rogue River in southwest Oregon near the city of Grants Pass. The report presents an evaluation of two alternatives for improving fish passage and reducing loss of salmon and steelhead.

ADDRESSES: Copies of the PR/FES may be requested from the following:

- Regional Director, Bureau of Reclamation, Attention: PN–6309, Pacific Northwest Region, 1150 North Curtis Road, Boise, ID 83706–1234. Telephone (208) 378–5087.
- Secretary/Manager, Grants Pass Irrigation District, 200 Fruitdale Drive, Grants Pass OR 97527–5268. Telephone (503) 476–2582.
- Area Manager, Bureau of Reclamation, Lower Columbia Area Office, 1503 NE 78th, Suite 15, Vancouver, WA 98664. Telephone (206) 576–8858.

Copies of the PR/FES are available for inspection and review at the following locations:

- Josephine County Public Library, Grants Pass, Oregon.
- Medford Public Library, Medford, Oregon.
- Rogue River Public Library, Rogue River, Oregon.

SUPPLEMENTARY INFORMATION: The federally preferred plan proposes replacement of existing pumping and diversion facilities with two electrically-powered pumping plants, removal of the dam and appurtenant structures, and forgiveness of the remaining debt to the Federal Government. No significant changes have been made to the preferred plan as presented in the Bureau of Reclamation's planning report/draft environmental statement (DES 94–51).

The PR/FES presents the preferred plan, an alternative plan that retains the dam, and the no Federal action plan and describes the existing environment and environmental consequences of plan implementation. Comments received during the 90-day review of the PR/DES and Reclamation's responses are documented. It is Reclamation's intention to defer further action or recommendations until State of Oregon initiatives and recommendations regarding Savage Rapids Dam are completed. We anticipate that those questions will be resolved in mid-1996.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Pacific Northwest Region, Attention: PN–6309, 1150 North Curtis Road, Boise, Idaho 83706–1234. Telephone (208) 378–5087.

Dated: August 18, 1995.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 95–21903 Filed 9–1–95; 8:45 am]

BILLING CODE 4310–95–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Ellen R. Keys, (202) 927–5673. Comments regarding this information collection should be addressed to Ellen R. Keys, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Room 2209, Washington, DC 20423–0001 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Office: Office of Compliance and Enforcement.

Title of Form: Owner-operator Annual Report Form.

OMB Form Number: 3120–0061.

Agency Form Number: OCCA–143.

No. of Respondents: 1,045.

Total Burden Hours: 52.25 (estimated 3 minutes per response).

Vernon A. Williams,

Secretary.

[FR Doc. 95–21915 Filed 9–1–95; 8:45 am]

BILLING CODE 7035–01–P

[Ex Parte No. 388 (Sub-No. 26)]

Intrastate Rail Rate Authority—Oklahoma

AGENCY: Interstate Commerce Commission.

ACTION: Extension of certification.

SUMMARY: By decision served August 30, 1990, the State of Oklahoma, through the Oklahoma Corporation Commission, was certified to regulate intrastate rail rates, classifications, rules, and practices for the 5-year period ending August 30, 1995. Pursuant to a request from Oklahoma, the Commission extends certification for an additional 60 days so that Oklahoma can complete an application for recertification in compliance with *State Intrastate Rail Rate Authority,* 5 I.C.C.2d 680 (1989).

DATES: Oklahoma's certification is extended to October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: August 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21913 Filed 9–1–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32756]

Union Pacific Railroad Company and Burlington Northern Railroad Company—Joint Relocation Project Exemption—in Fort Collins, CO

On August 2, 1995, Union Pacific Railroad Company (UP) and Burlington Northern Railroad Company (BN) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad over the BN in Fort Collins, Larimer County, CO. The proposed transaction was expected to be consummated on, or soon after August 9, 1995.

UP and BN are class I rail carriers that own and operate separate lines of railroad in and near the City of Fort Collins, CO. UP's tracks are located on its line of railroad known as the Fort Collins Branch which extends from LaSalle, CO westward to Fort Collins. Also, LaSalle at milepost 47.2, is a station on UP's mainline known as the Greeley Branch, which is generally a north-south route.

The rail lines located at Fort Collins between Mulberry Street and Lemay Avenue, are the subject of this joint relocation project. Both BN and UP have rail lines that extend past Mulberry Street to other points in Fort Collins and past Lemay Avenue, the BN line extending to Greeley, CO and the UP line extending to LaSalle.

Under the joint relocation project, UP and BN propose the following transactions: (1) BN will grant UP overhead trackage rights over BN's track between BN mileposts 75.48, near Mulberry Street, and BN milepost 76.04, near Lemay Avenue, a distance of 0.56 mile at Fort Collins; (2) UP's incidental abandonment and discontinuance of operation over a segment of UP's Fort Collins branch line between milepost 31.23, near Mulberry Street, and milepost 30.66, near Lemay Avenue, at Fort Collins, a distance of approximately 0.57 mile; and (3) the incidental construction of connecting tracks between existing UP and BN rail lines. One of the connections is located near Mulberry Street and the other connection near Lemay Avenue. The portion of the track to be constructed is located on the respective parties' property. The notice states that construction of the connector tracks are an important part of the relocation in order for UP to operate the trackage rights over BN.

The line relocation project is to improve operational and maintenance practices for UP and BN, and will benefit the City of Fort Collins. UP's two road crossings at the major streets of Mulberry Street and Lemay Avenue will be eliminated.

UP and BN state that there are no UP rail stations on the segment of the line in the incidental abandonment, no new traffic will be generated by the proposed transaction and there will be no extension of rail service into new territory. The notice also states that there will be no adverse effect on shippers and no impact or change in the competitive situation of rail carriers in the area.

The Commission will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993). The Commission has determined that line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the embraced incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions imposed in *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).

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: Joseph D. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Decided: August 28, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21914 Filed 9–1–95; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee

AGENCY: National Communications Systems (NCS), Joint Secretariat.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held on Friday, September 22, 1995, from 9 a.m. to 3 p.m. The meeting will be held at the Mitre-Hayes Building, 7525 Colshire Dr., McLean VA 27006. The agenda is as follows:.

A. Call to Order/Welcoming Remarks.
B. National Information Infrastructure Task Force.
C. Wireless Services Task Force.
D. Legislative & Regulatory Working Group.
E. Information Assurance Task Force.
F. Network Security Group.

Due to the requirement to discuss classified information, in conjunction

with the issues listed above, the meeting will be closed to the public in the interest of National Defense.

FOR FURTHER INFORMATION CONTACT: Telephone (703) 607–6221 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204–2198.

Dennis Bodson,

Assistant Manager, Technology and Standards.

[FR Doc. 95–21902 Filed 9–1–95; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting an expedited notice of information collection that will affect the public. Interested persons are invited to submit comments by September 15, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Customer Service Satisfaction by Sponsored Research Offices at Academic Institutions.

Affected Public: Not-for-profit institutions.

Respondents/Reporting Burden: 150 respondents, 75 total burden hours.

Abstract: Purpose of the survey is to obtain views of officials in sponsored research offices at academic institutions about their satisfaction with critical aspects of the NSF proposal and award process, in particular, timeliness and clarity of information about programs and processes and responsiveness in processing proposals and awards. Method of obtaining is an e-mail survey questionnaire to individuals on the NSF electronic grants bulletin board and request responses from individuals in sponsored research offices. The bulletin board reaches the sponsored research offices of about 350 universities and colleges, with which NSF does the bulk of its proposal and award business.

Dated: August 30, 1995.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 95–21891 Filed 9–1–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–424]

Georgia Power Company, et al. (Vogtle Electric Generating Plant, Unit 1); Exemption

I

Georgia Power Company, et al. (the licensee) is the holder of Facility Operating License No. NPR–68, which authorizes operation of the Vogtle Electric Generating Plant (VEGP), Unit 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor, VEGP Unit 1, at the licensee's site located near Waynesboro, Georgia.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs), at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shutdown for the 10-year inservice inspection of the primary containment.

III

By letter dated May 12, 1995, as supplemented by letter dated June 6, 1995, the licensee requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 18 months (from the March, 1996, refueling outage, to the September, 1997, refueling outage) and would permit the third Type A test of the second 10-year inservice inspection period to not correspond with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2) (ii), (iii) and (vi) as the basis for the exemption. They point out that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the experience at Vogtle Unit 1 during the three Type A tests (one preoperational and two during the first 10 year inservice inspection period) conducted from 1986 to date, that any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have only been confirmatory of the results of the Type B and C test results. Therefore, application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

Additionally, the licensee stated that their exemption request meets the requirements of 10 CFR 50.12 for the following reasons:

10 CFR 50.12 Requirements

In accordance with 10 CFR 50.12, the Commission may grant an exemption to the requirements of the regulations of 10 CFR 50 if the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and special circumstances are present.

The Requested Exemption is Authorized by Law

There is no known law that would be violated by the granting of the proposed exemption. 10 CFR 50.12 provides the basis for granting exemptions to the requirements of 10 CFR 50 regulations. The NRC has granted similar exemptions in the past. Therefore, the exemption is authorized by law.

The Requested Exemption Does Not Present an Undue Risk to the Public Health and Safety

10 CFR 50, Appendix J states that the purpose of the regulation is to assure that leakage through primary containment and systems and components penetrating containment does not exceed allowable values, as specified in the Technical Specifications or associated bases, and that proper maintenance and repair are performed throughout the service life of the containment boundary components. The ILRT history for VEGP, Unit 1 during the first 10 year service period inspection interval indicated that the containment structure has not experienced degradation. The NRC has conducted a detailed study of integrated leak rate tests performed from 1987 to 1993. That study, documented in draft NUREG–1493, determined that 97% of the leakage rate tests that exceed the acceptance criteria are identified by LLRT programs. The LLRT program at VEGP, Unit 1 has been successful in maintaining low Type B and C containment leakage. Since there has been no identified containment structural leakage, the

LLRT program has contributed to the successful ILRTs. Therefore, as shown in the NRC study and as indicated by the VEGP, Unit 1 containment performance history, postponing the ILRT by one refueling cycle remains consistent with the intent of the regulation and will not present an undue risk to the public health and safety.

The Requested Exemption Will Not Endanger the Common Defense and Security

GPC interprets the term ''common defense and security'' as referring principally to the safeguarding of special nuclear material, the absence of foreign control over the applicant, and the protection of restricted data. The granting of the requested exemption will not affect any of those matters, and thus, the granting of the exemption is consistent with the common defense and security of the United States.

Special Circumstances are Present Which Necessitate the Request for an Exemption to the Regulations of 10 CFR 50, Appendix J, Section III.A.5(b)(2)

The special circumstances of 10 CFR 50.12(a)(2) (ii), (iii), and (vi) apply to this requested exemption.

50.12(a)(2)(ii)—Application of the Regulation is Not Necessary to Achieve the Underlying Purpose of the Rule

The underlying purpose of 10 CFR 50, Appendix J will still be served if a third ILRT is not conducted during the first 10-year service period. Appendix J states that the leakage test requirements provide for periodic verification by tests of the leak tight integrity of the primary reactor containment. The Appendix further states that the purpose of the tests is to assure that leakage through the primary reactor containment shall not exceed the allowable leakage rate values as specified in the Technical Specifications or associated bases.

10 CFR 50, Appendix J, Section III.D.1(a) states that a set of three periodic tests shall be performed at approximately equal intervals during each 10-year period and that the third test shall be conducted when the plant is shut down for the 10-year plant inservice inspections. The proposed exemption would permit delaying of the scheduled Type A test and permit performance of the Type A test after the completion of the first 10-year inservice inspection interval in accordance with the schedule to be provided in the proposed revision to Appendix J. The methodology, acceptance criteria, and Technical Specifications leakage limits for performance of the Type A test will not change.

The testing history, structural capability of the containment, and the risk assessment discussed previously establish that 1) VEGP, Unit 1 has had acceptable containment leakage rate test results, 2) the structural integrity of containment is assured, and 3) there is negligible risk impact in changing the Type A test schedule on a one-time basis.

Thus, there is significant assurance that the extended interval between Type A tests in concert with the Type B and C testing continue to provide periodic verification of the leak tight integrity of the containment.

10 CFR 50.12(a)(2)(iii)—Compliance With the Regulation Would Result in Undue Hardship or Other Costs That Are Significantly in Excess of Those Contemplated When the Regulation Was Adapted

Postponing the ILRT for VEGP, Unit 1 will eliminate unnecessary testing without any reduction in plant safety. The ILRT typically requires two-to-three days to perform, with the possibility of significant extended time requirements. Outage activities are severely impacted during the preparation period prior to the ILRT and during the performance of the ILRT. A cost savings can be realized by a reduction in outage time, eliminating the impact of the ILRT on other outage activities, and direct costs related to obtaining equipment and services necessary for performance of the ILRT. This proposed exemption could result in a total cost benefit of about $1,100,000, by eliminating one ILRT.

10 CFR 50.12(a)(2)(vi)—Presence of Material Circumstances Not Considered When the Regulation Was Adopted

Certain material circumstances were not considered when the regulation was adopted. The benefit of time has provided experience and information that give a better perspective about containment integrity. Two important material circumstances are testing history and the development of probabilistic risk assessments (PRAs).

Since the promulgation of 10 CFR 50, Appendix J, in 1973, more than 20 years of nuclear power plant operating experience has been obtained. A review of industry data did not find any instances where a Type A test failed to meet Appendix J acceptance criteria as a result of a containment structural leak not due to initial fabrication or a plant modification. That operating history provides a significant indicator that containment structural integrity (passive structure) is not a significant safety concern.

Plant specific PRAs were not available in 1973, and therefore, were not considered when the regulation requiring compliance with Appendix J [10 CFR 50.54(o)] was adopted. Overall plant risk due to containment leakage is relatively small given the small probability of containment leakage itself. The predominant contributor to degraded containment integrity is the phenomenological effects of a severe accident, not pre-existing containment integrity conditions. An assessment of the risk impact in the exemption request indicates that there is no undue risk to the public health and safety as a result of the proposed scheduler extension of the Type A test.

There have been no modifications to the containment structure or liner that would impact the overall containment integrity and leak tightness.

IV

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the Type A test by approximately 18 months. The Commission has determined that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption. Specifically, these circumstances are that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of the tests is to assure that leakage through the primary reactor containment shall not exceed allowable leakage rate values. The staff has concluded, for the reasons set forth herein, that the purpose of the rule will continue to be achieved with the licensee's proposed exemption.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. All of the Type A tests have passed and the licensee has noted that the results of the Type A testing have been confirmatory of the Type B and C tests which will continue to be performed. The licensee will perform the general containment inspection although it is only required by Appendix J (Section V.A.) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The NRC staff has also made use of a draft staff report, NUREG–1493, which provides the technical jusification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3% of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to asssist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs, the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493).

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix Type A test to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 44514).

This Exemption is effective upon issuance and shall expire at the completion of the 1997 refueling outage.

Dated at Rockville, Maryland, this 29th day of August 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21929 Filed 9–1–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92–463), notice is hereby given that the forty-sixth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATES: September 28, 1995, at 10:00 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary System Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–21572 Filed 9–1–95; 8:45 am]

BILLING CODE 6325–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Clinton Woods, Passaic County, NJ, Chapel Farms, Talbot County, MD

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Clinton Woods, located in West Milford, Passaic County, New Jersey, and Chapel Farms, located in Easton, Talbot County, Maryland, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notice of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until December 4, 1995.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person:

For the Clinton Woods property: Mr. Steve Kilduff, Resolution Trust Corporation, c/o RPC-Mitchell/Titus, Inc., 440 East Sweedsford Road, Suite 2000, Wayne, PA 19087, (610) 254–0400; Fax (610) 254–0363.

For the Chapel Farms property: Mr. Dan Hummer, Resolution Trust Corporation, Atlanta Field Office, 245 Peachtree Center Avenue, NE, Marquis One Tower, 10th Floor, Atlanta, GA 30303, (404) 230–6594; Fax (404) 230–8159.

SUPPLEMENTARY INFORMATION: The Clinton Woods property is located in the northern portion of Passaic County, approximately 2 miles northeast of the Town of West Milford and is situated east of Brook Road, south of Lookover Drive and Mount Laurel Lake. The site consists of approximately 90.9 acres of undeveloped land and contains wetlands. This property is adjacent to Wawayanda State Park and the Bearfort Mountain Natural Area, both of which are managed by the State of New Jersey for recreational and natural resource conservation purposes.

The Chapel Farms property is located in Easton, Maryland, and is accessible via Chapel Farms Drive and Laurel Street to the north or Plum Street to the west. The site has recreational value, contains wetlands, and consists of approximately 58.46 acres of undeveloped land with portions of the property being used for farming. This property is adjacent to a State-owned railroad right-of-way to be leased by the Town of Easton as a hiking and biking trail for recreational purposes. These properties are covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before December 4, 1995. by the Resolution Trust Corporation at the appropriate address stated above.

Those entitles eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government;

3. ''Qualified organizations'' pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]

Federal Register Publication Date:

[insert **Federal Register** publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any

portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects: Environmental protection.

Dated: August 29, 1995.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 95–21864 Filed 9–1–95; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36162; File No. SR–OCC–95–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Making the Stock Loan/Hedge Program Available to Market-Maker and Specialist Accounts Established and Maintained by Clearing Members

August 29, 1995.

On January 13, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–95–02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 11, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

The primary purpose of the proposed rule change is to make OCC's Stock Loan/Hedge Program [3] available to accounts established and maintained with OCC by clearing members for market-makers and specialists.[4] Pursuant to OCC's By-Laws and Rules regarding its Stock Loan/Hedge Program, clearing members are permitted to carry stock loan and borrow positions in market-maker accounts.[5] However, at the time OCC proposed its Stock Loan/Hedge Program, OCC was concerned that its market-maker agreements [6] did not adequately accommodate stock loans. Accordingly, in the original Stock/Loan Hedge filing OCC appended an Interpretation to Article XXI, section 5 of its By-Laws stating that OCC would not permit stock loan positions and stock borrow positions to be maintained in a market-maker's account unless the market-maker had entered into an account agreement authorizing stock loan positions and stock borrow positions to be maintained in the account. In addition, OCC stated in that filing that it intended to submit revised versions of the various forms of market-maker agreements to the Commission in a separate proposed rule change in the near future.

OCC has reviewed its current market-maker agreement forms and has concluded that the current forms do adequately accommodate the Stock Loan/Hedge Program. Section 1 of each market-maker agreement causes the market-maker and the clearing member to each agree that OCC has a lien ''on all long positions, securities, margin and other funds and assets in the Account.'' OCC believes that stock loan and borrow positions are ''securities, margin and other funds and assets'' and accordingly has concluded that this language adequately establishes its rights with respect to stock loan and borrow positions carried in market-maker accounts.

In addition, OCC has concluded that section 3 of its market-maker agreements causes market-makers signing the agreement to authorize the clearing member to lend assets (*i.e.*, stock) in the account and to authorize OCC to rely on the terms on which the assets are loaned.[7] Therefore, OCC now believes that the Interpretation to Article XXI, section 5 of its By-Laws is unnecessary and proposes to delete the Interpretation.

II. Discussion

Section 17A(a)(1)(B) of the Act [8] sets forth Congress' finding that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors. Under Section 17A(a)(2),[9] Congress directs the Commission to use its authority to carry out the objectives set forth in section 17A(a)(1). As discussed below, the Commission believes that OCC's proposed rule change is consistent with the objectives established by Congress under the Act because it should remove inefficient procedures from the clearance and settlement system.

Stock loan positions for which the loaned stock is held for the account of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35567 (April 5, 1995), 60 FR 18433.

[3] For a description of OCC's Stock Loan/Hedge Program, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 (File No. SR–OCC–92–34) (order granting permanent approval of the Stock Loan/Hedge Program).

[4] Market-makers and specialists are collectively referred to in this order as ''market-makers,'' and accounts established and maintained with OCC by clearing members for market-makers, including separate market-maker's or specialist's accounts, combined market-makers' or specialists' accounts, registered trader's accounts, and stock market-maker's or stock specialist's accounts (as described in Article VI, Section 3 of OCC's By-Laws) are collectively referred to in this order as ''market-maker accounts.''

[5] For examples of permitted stock loan and borrow positions, refer to OCC By-Laws Article XXI, section 5 stating that a stock loan position may not be maintained in a market-maker's account unless the loaned stock to which the stock loan position relates is held for the account of the market-maker; OCC Rule 601(c) setting out margin requirements for market-maker accounts in which stock loan and borrow positions are carried; and OCC Rules 2209 and 2210 describing the treatment of stock loan and borrow positions of a suspended clearing member, including stock loan and borrow positions carried in a market-maker's account.

[6] The term ''market-maker agreements'' is used in this order to refer collectively to the three forms of agreement for market-maker accounts (*i.e.*, separate market-maker's accounts, combined market-makers' accounts, and joint accounts).

[7] A stock loan is not the result of an ''exchange transaction'' for purposes of OCC's rules because it does not arise from a transaction on an exchange. Therefore, OCC was concerned that the language of section 1 of the market-maker agreements did not adequately accommodate stock loans because the language is limited to exchange transactions of market-makers for whom an account is established. However, a stock borrow or loan position is established by a lending clearing member or borrowing clearing member and not by a market-maker. As defined in Article I, section 1(S)(8), the term ''stock borrow position'' means the position of a borrowing clearing member with respect to a stock loan. In addition, in Article I, section 1(S)(11), the term ''stock loan position'' means the position of a lending clearing member with respect to a stock loan. A borrowing clearing member does not need any authorization from market-makers because the position is entirely the responsibility of the clearing member. Similarly, a stock loan position is entirely the responsibility of the lending clearing member. However, because a stock loan position in a market-maker account may arise only from a clearing member's lending of stock held for a market-maker for whom the account is carried (pursuant to Article XXI, section 5(d) of OCC's By-Laws), a lending clearing member does not need authority from a market-maker to permit the clearing member to lend the market-maker's stock, and OCC needs authority from the market-maker to rely upon the terms of the loan. As described in the text, OCC believes the current form of the market-maker agreements cause market-makers to provide this authority to both the clearing member and OCC.

[8] 15 U.S.C. 78q–1(a)(1)(B) (1988).

[9] 15 U.S.C. 78q–1(a)(2) (1988).

a customer other than a market-maker must be carried in the clearing member's customers' account. Stock loan positions for which the loaned stock is held for the account of a market-maker may be carried in the lending clearing member's customers' account or market-maker's account. Currently, stock loan and borrow positions may not be maintained in a market-maker's account unless the market-maker has entered into a market-maker's account agreement that specifically authorizes stock loan and borrow positions to be maintained in the account. Additionally, in the case of a combined market-makers' account, stock loan and borrow positions may not be maintained therein unless each market-maker that is a participant in the account has entered into an account agreement that specifically authorizes stock loan and borrow positions to be maintained in such an account. Because OCC has determined that its market-maker's account agreement does accommodate stock loans, OCC is proposing to amend its By-Laws and Rules to allow stock loan and borrow positions to be maintained in market-maker accounts without the execution of an additional agreement.

OCC continues to employ its monitoring and risk reduction procedures which are subject to Commission review and approval. Under the Stock Loan/Hedge Program, OCC has a lien and right of set off against stock loan and borrow positions, and the clearing members' margin requirements will reflect the increase or decrease in risk to OCC associated with stock loan and borrow positions. Open stock loan positions of clearing members will continue to be taken into account in calculating their stock clearing fund obligations. OCC's stock clearing fund is available to cover losses suffered by OCC as a result of the failure of a clearing member to perform any of its obligation to OCC with respect to stock loan and borrow positions.

OCC requires each participating clearing member to instruct OCC as to which accounts the stock loan and borrow positions are to be carried.[10] Clearing members may maintain stock loan positions in a customer's account, a market-maker's account, or a firm account. An instruction from a clearing member to OCC designating a customer's account or a market-maker's account as the account in which a stock loan position is to be carried will constitute a representation (1) that the loaned securities to which the stock loan position relates are carried for the account of a customer and that the hypothecation of such loaned stock to OCC does not contravene any provision of Commission Rules 8c–1 and 15c2–1[11] and (2) that the lending of the securities is consistent with Commission Rule 15c3–3.[12]

Because OCC has assured itself that its market-maker agreements are adequate to accommodate the entry of market-makers into the Stock Loan/Hedge Program, the Commission believes that the removal of OCC's interpretation to its By-Laws that requires a market-maker to execute a separate agreement in order to participate in the Stock Loan/Hedge Program will expedite the process of a market-maker's entry into the program. Thus, the Commission believes that the rule change is consistent with Congress' objective under section 17A(a) (1) (B) of the Act[13] because it removes inefficient procedures for clearance and settlement thereby eliminating unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors. Additionally, the Commission believes OCC's proposal is consistent with section 17A(a) (2) (A) of the Act[14] because the Stock Loan/Hedge Program extends the availability of intermarket clearing facilities by further linking and coordinating the clearance and settlement of securities and securities options.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of section 17A(b) (3) (F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) (2) of the Act, that the proposed rule change (File No. SR–OCC–95–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21935 Filed 9–1–95; 8:45 am]

BILLING CODE 8010–01–M

[10] Clearing members may submit standing instructions stating the account or accounts in which all of the clearing member's stock loan or borrow positions are to be carried.

[11] Rules 8c–1 and 15c2–1 (17 CFR 240.8c–1 and 240.15c2–1) prohibit the hypothecation and commingling of customer securities without first obtaining the written consent of each customer whose securities are to be hypothecated or commingled.

[12] Because Rule 15c3–3 (17 CFR 240.15c3–3) requires that a broker-dealer maintain possession or control of all customer fully-paid and excess margin securities, such securities can not be the subject of a stock loan. However, customer securities that the broker-dealer clearing member is permitted to lend may be the subject of a stock loan conducted through the Stock Loan/Hedge Program.

[13] 15 U.S.C. 78q–1(a) (1) (B) (1988).

[14] 15 U.S.C. 78q–1(a) (2) (B) (1988).

[15] 17 CFR 200.30–3(a) (12) (1994).

DEPARTMENT OF STATE

[Public Notice No. 2251]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Fire Protection; Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on Tuesday, October 3, 1995 at 9:30 a.m. in Room 6319 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of the meeting is to discuss the outcome of the Fortieth Session of the International Maritime Organization's Sub-Committee on Fire Protection, held on July 17, 1995.

The meeting will focus on proposed amendments to SOLAS for the fire safety of commercial vessels. Specific discussion areas include: smoke and toxicity, closing mechanisms of fire doors, heat radiation through windows and glass partitions, sprinkler systems and fixed water spraying systems, emergency escape breathing devices, high speed craft, criteria for maximum fire loads, fire safety measures for deep fat cooking equipment, foam concentrates, phasing out of halons, interpretations to SOLAS 74, role of the human element in maritime casualties, safety of passenger submersible craft, smoke control and ventilation, fire safety aspects of composite materials used on board ships, and matters relating to tanker safety.

Members of the public may attend up to the seating capacity of the room. For further information regarding the meeting of the SOLAS Working Group on Fire Protection contact Mr. Jack Booth at (202) 267–2997.

Dated: August 24, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–21841 Filed 9–1–95; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice No. 2250]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m., on Thursday, September 28, 1995, in Room 6319 of U.S. Coast Guard Headquarters, 2100

Second Street, SW., Washington, DC. The purpose of this meeting is to assist the United States Delegation in preparing for the eighth session of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages (JIGE), to be held October 9–10, 1995, and the 73rd session of the International Maritime Organization (IMO) Legal Committee, to be held October 11–13, 1995. Public comment will also be sought at the meeting regarding the acceptability of the International Convention on Maritime Liens and Mortgages, 1993 (93 MLM Convention).

To facilitate the attendance of those participants who may be interested in only certain aspects of the public meeting, the first subject addressed will be the status of the JIGE negotiations to revise the International Convention on the Unification of Certain Rules Related to the Arrest of Seagoing Ships, 1952 (1952 Arrest Convention). The principal focus of the JIGE will be: (1) Expanding the list of maritime claims for which a vessel may be arrested; (2) whether personal liability of the owner is a prerequisite to arrest, particularly when the claim is secured by a maritime lien; (3) the obligation of contracting parties to recognize and permit enforcement of national maritime liens granted under Article 6 of the 93 MLM Convention; (4) whether the arresting court should decide the merits of the case; and (5) the extent to which the Convention should be applied to vessels of non-contracting States. The United States has not ratified the 1952 Arrest Convention. However, the interests of United States owners of foreign flag vessels, cargo owners, and maritime claimants may be affected by changes to the Convention.

The second major group of subjects, which will be considered at approximately 10:30 a.m., will be the agenda items set for discussion at the 73rd session of the Legal Committee. The first agenda item will be preparations for the upcoming diplomatic conference that will adopt the draft Convention on Liability and Compensation in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) and the Protocol to amend the International Convention on Limitation of Liability for Maritime Claims (76 LLMC). Substantive agenda items for the 73rd session of the Legal Committee include consideration of a draft convention on offshore mobile craft, possible work on a draft convention on wreck removal, and consideration of a liability and compensation regime for bunker fuel incidents.

Last, at approximately 11:30 a.m., the public will be invited to comment on the acceptability of the 93 MLM Convention. In May 1993, the new Convention was adopted by delegations from sixty-five nations at a diplomatic conference convened under the joint auspices of the IMO and the United Nations Conference on Trade and Development (UNCTAD). The United States is not a signatory to the 93 MLM Convention, but the interests of United States shipowners and lienholders could be affected once the Convention enters into force abroad, particularly regarding ship financing and the recognition, priority, and extinction of maritime liens.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information or to submit views concerning the subjects of discussion, contact either Captain David J. Kantor or Lieutenant Commander Steven D. Poulin, U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: August 24, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–21842 Filed 9–1–95; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice No. 2248]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea and Associated Bodies Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 1 p.m. on Tuesday, October 3, 1995, in room 4513, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This meeting will discuss the upcoming 40th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on Sept. 2–6, 1996, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. The role of human factors in marine casualties;

b. Harmonization of probabilistic damage stability provisions for all ship types;

c. Technical revisions to the 1966 Load Line Convention;

d. Probabilistic oil outflow;

e. Ro-ro passenger vessel safety.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen or Mr. William Hayden, U.S. Coast Guard Headquarters, Commandant (G–MMS–2), Room 1308, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–2988.

Dated: August 24, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–21843 Filed 9–1–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF THE TREASURY

Customs Service

AES Satellite Broadcast

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Satellite Broadcast on the Automated Export System (AES).

SUPPLEMENTARY INFORMATION: On Thursday, September 7, 1995, from 2 to 3 p.m. EDT, there will be a satellite broadcast on the Automated Export System, what it is and what it does.

The broadcast includes interviews with members of the export trade community, partnership agencies and Customs field personnel. It will also include a roundtable discussion on the current status and future direction of AES. Participating in the roundtable discussion will be:

Michael Lane, Deputy Commissioner

Sharon Mazur, Director AES Development Team

Harvey Monk, Chief Foreign Trade Division, Bureau of the Census

Ray Pechacek, Texas Instruments

Dennis Murphy, District Director, Norfolk—(Moderator)

The broadcast will also include a dial-in question and answer session. An ''800'' number will be provided on screen during the broadcast for anyone interested in calling in to ask a question or to offer suggestions regarding AES.

Tune in to C band, Galaxy 4, Transponder 7, or Ku band, Galaxy 4, Transponder 12 to view the broadcast. Members of the trade are also welcome to view the broadcast on a space available basis at a local Customs office. Contact the nearest Customs District office for more information.

Dated: August 24, 1995.

Mary C. King,

Acting Director, AES Development Team

[FR Doc. 95–21911 Filed 9–1–95; 8:45 am]

BILLING CODE 4820–02–P

Notice of Issuance of Final Determination Concerning Carddock Units

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain CardDock units which are being offered to the U.S. Air Force (''Air Force''), under a procurement designated under Air Force Solicitation No. F01620–94–R–A430. The final determination found that based upon the facts presented, the country of origin of CardDock units which are manufactured in the U.S. from U.S. and foreign components is the U.S.

DATES: The final determination was issued on August 21, 1995. Any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of September 5, 1995. A copy of the nonconfidential portions of this final determination will be published in the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Anthony A. Tonucci, Attorney-Advisor, Office of Regulations and Rulings, (202) 482–7073.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 21, 1995, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), Customs issued a final determination concerning the country of origin of certain CardDock units which are being offered to the Air Force, under a procurement designated under Air Force Solicitation No. F01620–94–R–A430. The U.S. Customs ruling number is HQ 559255. This final determination was issued at the request of one of the offerors under procedures set forth at 19 CFR 177 subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that based upon the facts presented, ISA boards, frame assemblies and connector cables are substantially transformed in the U.S. as a result of being assembled with U.S. origin Bay Boards into CardDock units. Accordingly, the country of origin of the CardDock units is the U.S. This document gives notice pursuant to section 177.29, Customs Regulations, (19 CFR 177.29), of that final determination. Any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of September 5, 1995.

Dated: August 21, 1995.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 95–21910 Filed 9–1–95; 8:45 am]

BILLING CODE 4820–02–P

Notice to Test the Use of Reconciliation for Adjustments Made to the Price of Imported Merchandise by Related Party Companies under 26 U.S.C. 482

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final notice.

SUMMARY: This notice announces Customs plan to conduct a test regarding the use of reconciliation for those related party importers which have reason to believe upward adjustments may be made to the price of imported merchandise for tax purposes pursuant to 26 U.S.C. 482. This notice invites public participation in the test, and sets out the eligibility requirements for voluntary participation in the testing of reconciliation, for this purpose, and describes the basis on which Customs will select participants.

DATES: The test will commence no earlier than October 1, 1995, and will run until December 31, 1996. To participate in this reconciliation test, the application must be filed and approved by Customs on or before October 1, 1995.

ADDRESSES: To be considered for voluntary participation in this test applications should be submitted to Mr. William F. Inch, Director, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2311, Washington, DC 20229–0001.

FOR FURTHER INFORMATION CONTACT: Matthew Krimski 202–927–0411.

SUPPLEMENTARY INFORMATION:

Background

Section 1059A of the Internal Revenue Code

Section 1059A of the Internal Revenue Code provides that in related party transactions the amount of any costs—

(1) Which are taken into account in computing the basis or inventory cost of such property by the purchaser, and

(2) Which are also taken into account in computing the customs value of such property shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

The legislative history of section 1059A indicates that Congress intended to preclude the ''whipsaw'' effect on U.S. revenue which occurs when a party is allowed to claim a price for ''computing the customs value of such property by the purchaser'' that is lower than the price claimed for tax purposes.

When section 1059A was enacted, Congress was aware that the Customs value statute recently had been amended to make price paid the critical cost factor taken into account by the Customs Service in valuing goods for duty purposes. The legislative history of section 1059A also indicates that Congress wanted section 1059A to address this situation by attempting to place a ceiling on ''the amount of any (such) costs'' that can be claimed for tax purposes. All of the applicable legislative reports indicate, without exception, that Congress intended that section 1059A would instill some uniformity on the amount of costs which may be claimed to the IRS for tax purposes by limiting the amount of such costs to the amount claimed to, and taken into account by, the Customs Service in computing the Customs value.

The legislative history did state that appropriate adjustments may be made in cases where customs pricing rules differ from appropriate tax rules—as, for example, with the inclusion or exclusion of freight charges. Finally, the history states section 1059A applies to transfer prices subject to section 482 of the Internal Revenue Code.

In July of 1994, the Internal Revenue Service (IRS) issued final regulations implementing 26 U.S.C. 482. The IRS subsequently began considering whether and to what extent the 1059A regulations should be amended in the context of the new section 482 regulations. The section 482 regulations, specifically 26 CFR 1.482–1(a)(3), permits a controlled taxpayer, if necessary to reflect an ''arm's length result,'' to ''report on timely filed U.S. income tax return (including extensions) the results of its controlled transactions based upon prices different from those actually charged.'' The IRS is considering whether the 1059A regulations should be amended to allow the taxpayer, under appropriate circumstances, to make the upward section 482 adjustment.

This document announces a test that will facilitate the IRS/Customs decision

as to whether reconciliation procedures provide a viable and appropriate circumstance for a taxpayer/importer to make a post entry upward adjustment to the price of imported merchandise.

Customs Value Law

For Customs purposes the appraised value of imported merchandise is determined pursuant to section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act (TAA) of 1979. Transaction value is the primary basis of appraisement. Transaction value is defined in section 402(b)(1) as the ''price actually paid or payable for the merchandise when sold for exportation to the United States'' plus specified statutory additions.

Pursuant to section 402(b)(2)(A)(iv) the transaction value of imported merchandise shall be the appraised value only if the buyer and seller are not related, or if the buyer and the seller are related, the transaction value is acceptable under 402(b)(2)(B). Section 402(b)(2)(B) provides that transaction value between a related buyer and seller is acceptable if the buyer demonstrates that the declared transaction value meets one of the following two tests: (1) Circumstances of the Sale or (2) Test Values.

The reconciliation test, announced in this document, is designed for participants that engage in related party transactions.

Related Party Transactions

Under section 402(g) of the TAA the following persons are treated as related:

(1) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(2) Any officer or director of an organization and such organization.

(3) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(4) Partners.

(5) Employer and employee.

(6) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(7) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

For purposes of 402(g)(G), the phrase ''two or more persons directly or indirectly controlling, controlled by, or under common control with, any person'' is understood to cover the following situations:

(1) Where one of them directly or indirectly controls the other;

(2) Where both of them are directly or indirectly controlled by a third person; or

(3) Where together they directly or indirectly control a third person.

For purposes of this test, Customs will consider the fact that the related party importer has reason to believe that an upward adjustment may be made to the price as evidence that the relationship may have affected the price actually paid or payable for the imported merchandise. Therefore, transaction value may not be acceptable.

Rather, the merchandise may be appraised under section 402(f). The appraised value pursuant to section 402(f) will be derived from the transaction value method. That is, the appraised value will be the price for the imported merchandise after the upward section 482 adjustment is undertaken by the importer/taxpayer plus the applicable statutory additions: Packing, selling commissions, assists, royalties/license fees and proceeds of subsequent resale. In order to participate in the test, the importer/taxpayer must agree that 402(f) is the proper basis of appraisement, in the event an upward section 482 adjustment is, in fact, claimed for tax purposes.

Title VI of the North American Free Trade Agreement Implementation Act

In order for the importer to comply with Customs value law, when making upward adjustments, a mechanism must be established that permits the importer to submit information related to the upward adjustment after the time of entry. Customs has determined that the reconciliation provisions of the North American Free Trade Agreement Implementation Act (the Act) create a possible vehicle permitting these circumstances. Specifically, Title VI of the Act, Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of Title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 637 in Subtitle B of the Act amends section 484 of the Tariff Act of 1930 by establishing a new subsection (b) entitled ''Reconciliation''. Reconciliation is a planned component of the NCAP. Section 631 of the Act authorizes tests of planned NCAP components. Section 101.9(b) of the Customs Regulations, provides the regulations governing the testing of NCAP components. See T.D. 95–21 (60 FR 14211, March 16, 1995).

This test is established pursuant to those regulations.

Reconciliation

Reconciliation will allow an importer to provide Customs with information not available at the time of entry summary filing and which is necessary to ascertain the final classification and appraisement of imported merchandise. The reconciliation must be filed no later than 15 months from the date of the first entry summary filed under that reconciliation.

A reconciliation permits the liquidation of an entry summary/summaries despite the fact that undetermined information will be transmitted to Customs at a later time through the reconciliation process. Assuming there are no other outstanding issues, the entry summaries will be liquidated for all purposes other than that which is identified by the importer as pending reconciliation. The reconciliation will be liquidated in accordance with 19 U.S.C. 1500. The liquidation of the reconciliation may be protested, in accordance with 19 U.S.C. 1514, but the protest may only pertain to issues covered by the liquidated reconciliation.

A draft notice was published requesting comments from interested parties on July 5, 1995. We received ten comments and the following is Customs analysis and response to those comments.

Discussion of Comments

Bond Requirement

Comment: The commenter, a surety company, states that language should be added to clearly define the bond requirements for the reconciliation entry.

Customs Response: All entries which are pending reconciliation must be secured by a continuous bond. Customs will allow only one surety for all entries under the reconciliation. If a participant changes sureties during the reconciliation period, Customs must be notified before the change is actually made. No additional entries will be added to the first reconciliation, and a new reconciliation entry will be initiated. In this situation, Customs will issue a separate reconciliation entry number for the future entries to be filed during the remainder of the reconciliation period. Both reconciliation summaries will be due at the close of the reconciliation period.

A separate bond will not be required for the reconciliation entry. The continuous bond on the subject entries will provide coverage for the

reconciliation entry. The Basic Importation and Entry Bond Conditions under 19 CFR 113.62 provide for an agreement of the principal and surety to pay, as demanded by Customs, all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by the bond. The bond conditions as prescribed by regulation also provide for agreement by the principal to file within the time and in the manner prescribed by law and regulation, documentation to enable Customs to properly assess duties on the merchandise, collect accurate statistics with respect to the merchandise, and determine whether applicable law and regulation are met.

Bond Sufficiency

Comment: The commenter, a surety company, is concerned that a continuous bond may not adequately cover the amount due on the reconciliation entry.

Customs Response: For purposes of this test, Customs believes the continuous bond for the entry summaries will adequately cover the amount due on the reconciliation entry. Customs will monitor each reconciliation individually and should additional coverage be deemed necessary, it will be requested. Customs is conducting research into bond sufficiency from the standpoint of the Chief Financial Officers Act, with respect to all programs under the Mod Act.

Notice to Sureties

Comment: The commenter, a surety company, states that Customs must notify the surety bonding the entries subject to reconciliation that the importer is using reconciliation. Accordingly, the commenter suggests that Customs advises the surety, electronically if possible, as to which entries are subject to reconciliation as well as the specific issue pending reconciliation.

Customs Response: Upon acceptance into this reconciliation prototype, Customs will issue a confirmation letter to the participant. This letter will provide the reconciliation entry number which is to be utilized. In this document, Customs will also confirm that all entries filed on behalf of the applicant, within the designated time frame, meeting the scope as defined by the applicant, will be subject to reconciliation of the entered value pending upward adjustments in accordance with 26 U.S.C. 482. A courtesy copy of this confirmation letter will be sent to the surety company, which is designated in the application. This will serve as the notice to the surety that all entries filed within the designated time frame, meeting the scope as defined by the applicant, will be subject to reconciliation of the entered value. The value element on the subject entries will be liquidated on the reconciliation entry.

Identification of Reconciliation

Comment: The commenter, a surety company, asks how Customs will identify such reconciliation.

Customs Response: Each reconciliation will be identified by a separate entry number issued by Customs.

Scope of Reconciliation

Comment: The commenter, a surety company, is concerned that Customs will be withholding liquidation pending reconciliation of the valuation on all entries filed by the applicant, when in fact, not all merchandise on those entries may be subject to the possible upward adjustment.

Customs Response: For the purposes of this reconciliation prototype, the importer is required to provide, in the application, the scope of the reconciliation. The scope will be defined in the application to include the importer, filer, surety, merchandise (by Harmonized Tariff Schedule number) which will be subject to the reconciliation, and reconciliation time frame (October 1, 1995 through March 31, 1996, or the end of their tax year, whichever comes first). During the reconciliation period, the entered value, with respect to upward 482 adjustments, on the entries meeting the designated scope criteria will be held open pending the reconciliation.

Liquidation

Comment: The commenter, a surety company, requests information regarding the liquidation of the reconciliation.

Customs Response: The reconciliation is an entry, identified by entry type 09. The reconciliation will permit the liquidation of the entries despite the fact that the undetermined value information will be provided to Customs at a later time. Upon liquidation of the entries, any Customs decision entering into that liquidation, e.g., classification, may be protested pursuant to 19 U.S.C. 1514. When the value information is provided in the reconciliation, the reconciliation will be treated as an entry and liquidated. The liquidation of the reconciliation may also be protested but the protest may only pertain to elements contained in the liquidated reconciliation, i.e., the protest may not re-visit elements previously liquidated in the entries.

Customs will take action to liquidate all reconciliation entries filed pursuant to this prototype, and extend the liquidation if necessary. Should the reconciliation NOT be filed, the importer will be subject to liquidated damages as the terms of the bond have been breached. In such a case, Customs will analyze the individual situation and liquidate the reconciliation appropriately.

Possible Abuse of Reconciliation

Comment: The commenter, a surety company, states that Customs should limit the number of reconciliations an importer can use, so as to avoid separate reconciliations for each issue for each entry.

Customs Response: For the purposes of this test, the only element open for reconciliation is valuation, specifically an adjustment to the price made to comply with 26 U.S.C. 482. Customs will be able to adequately monitor the amount of reconciliations requested through the application process. The intent of the reconciliation is to link all entries with common, undetermined value information to one reconciliation entry.

Expansion to Include Downward Adjustments

Comment: The test should be expanded to include both upward and downward adjustments.

Customs Response: This test is designed to address a specific issue identified by the Internal Revenue Service. That is, if an importer must make an upward adjustment to its transfer price in order to comply with 26 U.S.C. 482, section 1059A acts as a bar to such adjustment if the lower price was declared to Customs. The section 1059A bar does not apply to situations in which the importer contemplates making a downward adjustment to the price. Given the restricted scope of the test, Customs has concluded that the test will continue to be limited to importers that contemplate making an upward adjustment to their transfer prices to comply with 26 U.S.C. 482. However, Customs is analyzing whether downward adjustments to prices can and should be addressed in future reconciliation tests.

Bases of Appraisement

Comment: There is no reason why section 1401a(a)(I)(f) must be the applicable basis of appraisement in the proposed test.

Customs Response: As was stated in the initial notice, Customs considers the

fact that the related party importer has reason to believe that an upward adjustment may be made to the price of the imported merchandise as evidence that the relationship may have affected the price actually paid or payable for the merchandise. Therefore, transaction value will not be considered to be the proper basis of appraisement. The importer continues to have the right to have the hierarchy of appraisement applied to its transactions. However, if the importer claims another basis of appraisement, such as deductive value, then the importer will not be able to participate in the proposed test. This is due to the fact that the test is designed to determine how Customs can use the prices that the importer paid to the seller and the upward adjustments to those prices by using reconciliation. If a basis of appraisement is used that does not use these adjusted prices then the information is meaningless, for purposes of this test. Appraisement under section 402(f) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 allows Customs to utilize the importer's information on the price it paid, and to reasonably appraise the merchandise using that information.

Providing Customs With IRS Form 5472

Comment: One commenter responded with a suggestion that the Internal Revenue Service routinely provide the U.S. Customs Service with the IRS Form 5472 which requests information on import transactions and the related party status of the exporter/importer. The information on the Form 5472 would identify differences between the basis or inventory costs of imported goods as carried for IRS purposes and the Customs value of the imported goods. If such differences did exist, IRS Form 5472 requires an explanation for such differences and if supporting documentation exists in the United States.

Customs Response: Under existing IRS confidentiality statutes, the routine transfer of IRS information to the U.S. Customs Service is prohibited. Only in cases where the Customs Service has a Customs Regulatory Audit planned or in progress, can Customs request certain specific information from the IRS and only in cases when the importer has refused to provide the information voluntarily. The existing provisions for these transfers are contained in Public Law 103–182 passed December 8, 1993.

Description of Test

This test will be limited to participants who meet the eligibility criteria set forth below. It will cover entry summaries filed by those participants from October 1, 1995 to March 31, 1996 or the end of the participant's tax year, whichever comes first. Each reconciliation is limited to one importer/filer/surety combination.

By statute, reconciliation must be filed within 15 months of the entry summary. The reconciliation entry (i.e. the intent to file the reconciliation) is considered filed when the application is submitted to Customs. For purposes of this test, participants must file the reconciliation summary, which provides the outstanding value information, within 15 months of the filing of the first affected entry summary or by December 31, 1996, whichever comes first. All reconciliation entries will be filed to the attention of Matthew Krimski, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, DC 20229. Customs will advise participants where additional duties resulting from the reconciliation are to be tendered.

All entries which are pending reconciliation must be secured by a continuous bond. Customs will allow only one surety for all entries under the reconciliation. If a participant changes sureties during the reconciliation period, Customs must be notified before the change actually is made. No additional entries will be added to the first reconciliation, and a new reconciliation entry will be initiated. In this situation, Customs will issue a separate reconciliation entry number for the future entries to be filed during the remainder of the reconciliation period. Both reconciliation summaries will be due at the close of the reconciliation period.

The continuous bond on the subject entries will provide coverage for the reconciliation entry. The Basic Importation and Entry Bond Conditions under 19 CFR 113.2 provide for an agreement of the principal and surety to pay as demanded by Customs all additional duties, taxes, and charges subsequently found due, legally fixed and imposed on any entry secured by the bond. The bond conditions as prescribed by regulation also provide for agreement by the principal to file within the time and in the manner prescribed by law and regulation, documentation to enable Customs to properly assess duties on the merchandise, collect accurate statistics with respect to the merchandise and determine whether applicable law and regulation are met.

The reconciliation is an entry identified by entry type 09. The reconciliation will permit the liquidation of the entries despite the fact that the undetermined value information will be provided to Customs at a later time. Upon liquidation of the entries, any Customs decision entering into liquidation e.g. classification, may be protested pursuant to 19 U.S.C. 1514. When the value information is provided in the reconciliation, the reconciliation will be treated as an entry and liquidated. The liquidation of the reconciliation also may be protested, but the protest may only pertain to elements contained in the liquidated reconciliation, i.e. the protest may not re-visit elements previously liquidated in the entry.

Note: In those cases in which the Harmonized Tariff Schedule (HTS) classification is determined by the unit value, the classification for those commodities also will be held open pending the reconciliation.

Customs will take action to liquidate all reconciliation entries filed pursuant to this prototype and extend the liquidation if necessary. Should the reconciliation not be filed, the importer will be subject to liquidation damages as the terms of the bond have been breached. In such cases, Customs will analyze the individual situation and liquidate the reconciliation appropriately.

Application

Applications will be submitted to Mr. William F. Inch, Director, Office of Regulatory Audit, United States Customs Service, 1301 Constitution Ave. NW., Room 2311, Washington, DC 20229–0001. All applicants will be notified in writing of approval or disapproval regarding test participation. All applicants who meet the eligibility criteria will be chosen to participate in this test. The application must address the ability to meet the eligibility requirements. The applicant must consent, in the application, to all the conditions set forth in the description of this test and eligibility criteria. The applicant must set forth in the application the date on which the applicant's tax year ends. The following information must be included in the application:

1. Importer and IR number;
2. Filer;
3. Surety;
4. Reconciliation Time frame (October 1, 1995 through end of tax year or March 31, 1996, whichever comes first;
5. Merchandise, by Harmonized Tariff Schedule number, impacted by the possible 482 adjustment;
6. Countries of origin of impacted merchandise; and
7. Ports of entry through which the subject merchandise will be imported during the reconciliation period.

By applying, applicants agree that the value for merchandise covered by all entry summaries filed by them or on their behalf on or after October 1, 1995 until the end of the tax year or March 31, 1996, whichever comes first, shall be finally determined by the liquidation of the reconciliation filed in accordance with the test. The Office of Regulatory Audit will review the application to determine that the applicant has met all eligibility requirements.

Documentation Required to Support Reconciliation

The approved participant shall maintain and produce upon Customs request all relevant documentation to support the change in the entered value. The reconciliation shall include the following information:

1. The entry numbers and entry dates, total entered value and ports of entry of all entries filed with Customs falling within the scope of the test.
2. Broken down by entry number, a cumulative list of units imported by classification number and the change (final entered value) to that entered value.
3. Proposed duty due pursuant to reconciliation.

In order to support the reconciliation, the approved applicant shall maintain and produce upon Customs request all relevant documentation to support the change in entered value. The approved applicant may be required to provide any or all of the following documentation:

1. The IRS Schedule M–1, and the Form 1120 Corporate Tax Return.
2. Any and all other supporting documentation filed along with the M–1 and the Form 1120 that was furnished to the IRS.
3. Any or all IRS documents or communications with the participant regarding the relevant 482 adjustment.
4. Any and all documentation including any books and records or computerized data to relate the 482 adjustment to the entries filed with Customs.

Such information and supporting material should be provided in a format or electronic media commonly in use. Examples are an IBM compatible computer 3.5 disk utilizing a software product such as Access or Excel or other similar spreadsheet or database application such as Lotus 1, 2, 3.

Verification

Customs Regulatory Audit, in conjunction with other Customs disciplines, will determine if any verification effort is necessary to establish the accuracy of the details submitted. The extent of the verification will be determined by Regulatory Audit, and if an audit is required, established Regulatory Audit procedures will be followed.

Eligibility Criteria

In order to qualify for this test of reconciliation, importers must have reason to believe they may invoke the IRS regulations to make upward adjustments to the price of the imported merchandise. Importers must provide, on an entry-by-entry basis, the electronic entry of merchandise and the electronic entry summary of required information (ABI). Other requirements and conditions are as follows:

1. The test only applies to the related party transactions engaged in by participants who qualify under Internal Revenue Service Section 482 requirements to make upward adjustments and which are not subject to Antidumping/Countervailing Duty proceedings.
2. Participants' tax year must end between October 31, 1995 and March 31, 1996.
3. Customs decision to allow a company to participate in the test program will be made in consultation with the Internal Revenue Service.
4. Each participant must provide U.S. Customs with the methodology that will be used to arrive at the final price of the imported merchandise.
5. Each participant agrees that appraisement is under section 402(f) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, if, in fact, an upward section 482 adjustment is made for tax purposes.
6. Entries involving merchandise under this test will not be eligible for drawback.

Selectivity Criteria

The Office of Regulatory Audit, in conjunction with other Customs disciplines, will review the application to ensure the eligibility requirements are met. All applicants who meet the eligibility criteria will be allowed to participate, provided no other Customs office objects.

Objectives of the Test

The objectives of this test are:

1. To work with the trade community to further compliance in the value area regarding related party transactions.
2. To allow companies intending to make Internal Revenue Service Section 482 adjustments, which may ultimately result in an upward adjustment to the price for merchandise, the opportunity to reconcile their business operations regarding U.S. Customs and Internal Revenue Service requirements applicable to related party transactions.
3. To determine if reconciliation is a viable method to ensure a coordinated and consistent Customs response to Internal Revenue Section 482 adjustments which result in the upward adjustment of the Customs valuation under Section 1059A.
5. To test the type of information needed by Customs to process a reconciliation.

Test Evaluation Criteria

The criteria which will be used to evaluate whether or not reconciliation is a viable means to allow importers which make upward adjustments to the price of imported merchandise will be based on measurable outcomes which include:

1. The number of participants;
2. Customs resources expended to administer and monitor the program;
3. Customs resources expended to verify final reconciliation entry claims and the methodologies applied;
4. Amount of additional revenue collected;
5. Survey of participants on the conduct of the test and its effect on their business operations; and
6. IRS and Census satisfaction with the results of the test.

Dated: August 30, 1995.

Edward F. Kwas,

Assistant Commissioner, Office of Strategic Trade.

[FR Doc. 95–21909 Filed 9–1–95; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, ''Pandora's Box: Women in Classical Greece'' (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the

[1] A copy of this list may be obtained by contacting Ms. Carol Epstein of the Office of the General Counsel of USIA. The telephone number is 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

foreign lenders. I also determine that the temporary exhibition of the objects at the Walters Art Gallery, Baltimore, MD, from on or about November 5, 1995, to on or about January 7, 1996, and, at the Dallas Museum of Art, Dallas, TX, from on or about February 4, 1996, to on or about March 31, 1996, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 29, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–21930 Filed 9–1–95; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Impression of France: Monet, Renoir, Pisarro, and their Rivals'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Museum of Fine Arts, Boston, Massachusetts from on or about October 4, 1995, to on or about January 14, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 30, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–21931 Filed 9–1–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Carol B. Epstein of the Office of the General Counsel of USIA. The telephone number is 202 619–6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 60, No. 171
Tuesday, September 5, 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).

ASSASSINATION RECORDS REVIEW BOARD

Government in the Sunshine Act Meeting Notice

SUMMARY: On August 30, 1995, at 2:45 p.m., the Assassination Records Review Board determined that it would need to hold an emergency meeting for the afternoon of the same day. The Review Board determined that it needed to take immediate action to withdraw from Presidential consideration its recommendations regarding the release of certain Federal Bureau of Investigation documents. The Review Board determined that discussion of and voting on the issue could not be delayed for seven days in order to give the public seven days notice of the meeting pursuant to the Government in the Sunshine Act. Thus, pursuant to 5 U.S.C. 552b(e)(1), a majority of the members of the Review Board voted by recorded vote to hold an emergency meeting on August 30, 1995. The Review Board is issuing this notice of the meeting at the earliest practicable time—on the same day that the Review Board is meeting—pursuant to the requirements of the Government in the Sunshine Act.

DATE: August 30, 1995.

PLACE: Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Motion to withdraw from Presidential consideration the Review Board's recommendations regarding the release of certain Federal Bureau of Investigation documents.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, N.W., Second Floor, Washington, D.C. 20530. Telephone: (202) 724–0088. Fax: (202) 724–0457.

Dated: August 30, 1995.

David G. Marwell,

Executive Director.

[FR Doc. 95–22022 Filed 8–31–95; 9:02 am]

BILLING CODE 6820–TD–M

Corrections

Federal Register

Vol. 60, No. 171

Tuesday, September 5, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1320

Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act

Correction

In rule document 95–21235 beginning on page 44978 in the issue of Tuesday, August 29, 1995, make the following correction:

§ 1320.5 [Corrected]

Due to printing errors, page 44988 is being reprinted in its entirety as follows:

BILLING CODE 1505–01–D

(2)(i) the agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(ii) An agency shall provide the information described in paragraph (b)(2)(i) of this section in a manner that is reasonably calculated to inform the public.

(A) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), the information described in paragraph (b)(2)(i) of this section is provided ''in a manner that is reasonably calculated to inform the public'' if the agency includes it either on the form, questionnaire or other collection of information, or in the instructions for such collection.

(B) in the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, the information described in paragraph (b)(2)(i) of this section is provided ''in a manner that is reasonably calculated to inform the public'' if the agency places the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent.

(C) in the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, the information described in paragraph (b)(2)(i) of this section is provided ''in a manner that is reasonably calculated to inform the public'' if the agency publishes such information in the **Federal Register** (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of such information in the Code of Federal Regulations constitutes an alternative means of providing it ''in a manner that is reasonably calculated to inform the public.'' In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease of future reference that, even where an agency has already provided such information ''in a manner that is reasonably calculated to inform the public'' by publishing it in the **Federal Register** as a separate notice or in the preamble for the final rule (rather than in the regulatory text for the final rule or in a technical amendment to the final rule), the agency also publish such information along with a table or codified section of OMB control numbers to be included in the Code of Federal Regulations (see § 1320.3(f)(3)).

(D) in other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means that are reasonably calculated to inform the public of the information described in paragraph (b)(2)(i) of this section.

(c)(1) Agencies shall submit all collections of information, other than those contained in proposed rules published for public comment in the **Federal Register** or in current regulations that were published as final rules in the **Federal Register**, in accordance with the requirements in § 1320.10. Agencies shall submit collections of information contained in interim final rules or direct final rules in accordance with the requirements of § 1320.10.

(2) Agencies shall submit collections of information contained in proposed rules published for public comment in the **Federal Register** in accordance with the requirements in § 1320.11.

(3) Agencies shall submit collections of information contained in current regulations that were published as final rules in the **Federal Register** in accordance with the requirements in § 1320.12.

(4) Special rules for emergency processing of collections of information are set forth in § 1320.13.

(5) For purposes of time limits for OMB review of collections of information, any submission properly submitted and received by OMB after 12:00 noon will be deemed to have been received on the following business day.

(d)(1) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information:

(i) is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(ii) is not duplicative of information otherwise accessible to the agency; and

(iii) has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public.

(2) Unless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information—

(i) requiring respondents to report information to the agency more often than quarterly;

(ii) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(iii) requiring respondents to submit more than an original and two copies of any document;

(iv) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

(v) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

(vi) requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

(vii) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

(viii) requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

(e) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria set forth in paragraph (d) of this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under § 1320.11 or § 1320.12, but will independently assess any such collection of

federal register

Tuesday
September 5, 1995

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Administration

48 CFR Part 2401 et al.

HUD Acquisition Regulations: Miscellaneous Amendments and Competition Advocate Designation; Interim Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2401, 2402, 2404, 2405, 2406, 2413, 2415, 2416, 2419, 2426, 2428, 2429, 2432, 2436, 2437, 2452 and 2453

[Docket No. FR–3887–I–01]

RIN 2535–AA23

HUD Acquisition Regulation; Field Reorganization, Streamlining, and Simplification

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule makes changes to the HUD Acquisition Regulation (HUDAR) required to implement: the Department's Field reorganization, particularly the establishment of the Administrative Service Centers; the Federal Acquisition Streamlining Act of 1994 (FASA); and Departmental efforts to streamline and simplify the procurement process.

DATES: Effective Date: October 5, 1995.

Comment due date: Comments on this interim rule must be submitted on or before November 6, 1995.

ADDRESSES: Send written comments to Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh St., SW, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Room 5262, 451 Seventh Street, SW., Washington, DC 20410–3000 (voice (202) 708–0294, TDD (202) 708–1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 9, 1985 (50 FR 42097); and the general authorization in FAR 1.301.

The purpose of this interim rule is to amend the HUDAR to update existing coverage with respect to the Department's structure and organizational responsibilities; to implement FASA (Pub. L. 103–355, approved October 13, 1994); and to streamline Departmental procurement practices.

The heading of HUDAR subpart 2401.6 is revised to read ''Career Development, Contracting Authority, and Responsibilities''.

HUDAR 2401.601–73 is retitled ''Administrative Service Centers'' and is revised to reflect HUD's current field structure and to eliminate content which duplicates published delegations of procurement authority.

HUDAR 2401.602–3 is revised to conform to the structure of FAR 1.602–3 and provide greater discretion to the HCA in handling ratifications.

HUDAR 2402.101 is revised to add definitions for the ''accounting office'', and the ''best value'' and ''lowest-priced technically acceptable proposal'' approaches to source selection; to correct the HCA designation for field procurements; to provide a more generic definition for ''Legal Counsel''; to add the ''General Counsel'' to the list of ''Primary Organization Heads''; and to clarify the definition of ''Source Selection Official''.

The heading of HUDAR Subpart 2404.8 is revised to read ''Government Contract Files''.

HUDAR 2404.805–1 is renumbered and retitled to conform to recent FAR changes, and the content is revised to grant the contracting officer greater discretion in managing the disposition of unsuccessful proposals.

HUDAR subpart 2405.3 and section 2405.301 are removed in their entirety. HUD's practices in synopsizing contract awards will conform to the FAR.

HUDAR 2406.304–70 is revised to establish an approval official (Director, Office of Procurement and Contracts) for field contracts at a level consistent with that required by FAR 6.304.

HUDAR 2406.304–71 is removed in its entirety. HUD's practices in reviewing and approving justifications for other than full and open competition will conform to the FAR.

HUDAR 2406.501 is revised to state that the Senior Procurement Executive will designate the Department's Competition Advocate by **Federal Register** notice and to authorize each HCA to appoint contracting activity-level competition advocates.

HUDAR Part 2413 is retitled to conform to the FAR.

HUDAR 2413.107 is redesignated as 2413.106–2 and retitled to conform to the FAR. The regulation text is unchanged.

HUDAR 2413.403 is redesignated as 2413.402 to conform to the FAR, and revised to remove an obsolete directive and add correct information regarding the operation of imprest funds.

HUDAR 2413.404 is redesignated as 2413.403 to conform to the FAR and the text is revised to avoid duplication of imprest fund transaction limits stated in the FAR.

HUDAR 2413.505–2 is redesignated as 2413.505–1(b) and retitled to conform to the FAR. Its text is revised to authorize the use of Form HUD–2542, Purchase Order and Payment Authorization, for any small purchase charged to the FHA Fund, and to remove information that is internal in nature.

HUDAR subpart 2413.6 and section 2413.601 are added to reference HUD's internal directive governing use of the Government-wide commercial credit card to make micro-purchases.

HUDAR 2414.406–4 is revised to clarify that the concurrence of counsel should be obtained at headquarters or the field, depending on the location of the contracting activity.

HUDAR 2415.407 is revised to separate the basic provision dealing with proposal content from those cases requiring cost and pricing data. When the latter are required, new Alternate I is prescribed for use. In addition, contracting officers are granted the latitude to adapt Alternate I or develop additional text to deal with situations when partial cost and pricing data may be needed as provided in FAR 15.804–6(a)(2).

HUDAR 2415.408 is removed because adequate coverage on issuing solicitations is contained in the FAR.

HUDAR 2415.411 and 2415.411–70 are removed in their entirety. The prescribed use of the Form HUD–4056, Abstract of Proposals, is an internal agency matter.

HUDAR subpart 2415.6 contains numerous revisions to simplify HUD's source selection practices. While each section change is explained in turn below, the general thrust of these revisions is to move to one procedure for the evaluation of proposals, and to clarify distinctions in procedures when using the ''lowest-priced technically acceptable proposal'' or ''best value'' approach to source selection.

HUDAR 2415.604 is revised to establish a single procedure for the

evaluation of proposals and to distinguish responsibility for the source selection decision under the two possible source selection approaches—''best value'' or ''lowest-priced technically acceptable proposal''.

HUDAR 2415.605 is revised to require that each solicitation identify the source selection approach to be used in evaluating proposals, and to provide a distinction between the types of evaluation factors available for use.

HUDAR 2415.608 is revised to clarify procedural differences in the evaluation of proposals under the two possible source selection approaches, and to eliminate information adequately covered in the FAR.

HUDAR 2415.609 is removed. The content of this section was removed in an earlier HUDAR amendment; the section title was overlooked.

HUDAR 2415.611 is added to clarify requirements for documentation of the source selection decision.

HUDAR 2415.612 and 2415.612–70 are removed in their entirety. In order to streamline and expedite the procurement process, HUD will not use formal source selection procedures.

HUDAR 2415.613–70 is revised to clarify that the alternative procedures authorized by this section use the best value approach to source selection. That same section and 2415.613–72 are both revised to eliminate references to Source Evaluation Boards, a formal procedure that will no longer be used.

HUDAR Subpart 2416.3, Cost-Reimbursement Contracts, and sections 2416.301 and 2416.301–3 are removed in their entirety. Recent changes to the FAR to implement FASA eliminated the requirement for determinations and findings to support the selection of contract type.

HUDAR subpart 2426.1 is redesignated as subpart 2426.70 to conform to the FAR. Accordingly, HUDAR 2426.101, 2426.102, and 2426.103 are redesignated as 2426.701, 2426.702, and 2426.703 (the regulation text of the latter two sections is unchanged). HUDAR 2426.701 is revised to delete the list of ethnic groups designated as ''Minority Business Enterprises'', and instead rely on definitions established by the Small Business Administration pursuant to Section 8(d) of the Small Business Act.

HUDAR subpart 2426.2 and section 2426.201 are removed.

HUDAR Subpart 2428.2, Sureties, the heading of section 2428.204, and section 2428.204–70 are removed in their entirety. FAR 28.203–2 contains adequate information regarding the use of irrevocable letters of credit.

HUDAR 2429.101 is revised to conform the section title to the FAR and clarify that coordination with legal counsel may be at headquarters or in the field, depending on the location of the contracting activity.

HUDAR 2432.402, 2432.906 and 2432.908 are revised to correct references to HUD field components consistent with the Department's reorganization.

HUDAR 2436.602–2 and 2436.602–4 are revised to: authorize the appointment of non-voting advisors to architect-engineer evaluation boards; change appointment and selection authorities consistent with the Department's field reorganization; correct references to HUD's Standards of Conduct; and, clarify that referral of matters to legal counsel may occur at headquarters or in the field, as appropriate.

HUDAR 2437.205 is revised to remove the requirement for higher-level review of contracts for advisory and assistance services contracts consistent with recent changes to the FAR. In addition, the use of Form HUD–24003, GTR Performance Assessment (Final) is prescribed to document the utility of products or services delivered by the contractor, as required by FAR 37.205.

HUDAR 2452.215–70 is revised to separate the requirement for cost and pricing data from the basic provision concerning proposal content. A new Alternate I has been added to deal with situations when cost and pricing data are required, in conformance with recent FAR changes increasing the threshold for submission of cost and pricing data to $500,000.

HUDAR 2452.219–70 is revised to eliminate repetition and clarify the content of Alternate I.

HUDAR 2452.226–70 is revised to make a conforming change in a reference from 2426.103 to 2426.703, and to delete ''Hasidic Jewish Americans'' from the ethnic groups listed as ''Minority Business Enterprises''. Their inclusion was based on an improper application of the Minority Business Development Agency's regulations at 15 CFR 1400.1 which defines groups eligible for MBDA assistance. Those regulations do not establish eligibility for other Federal or Federally-funded programs.

HUDAR 2452.232–70 and 2452.232–71 are revised to allow discretion in their application and to correct the reference to field components in Alternate I to both clauses.

HUDAR 2453.213–71 is removed because Form HUD–24001, Order for Supplies or Services, is no longer in use.

HUDAR 2453.213–72 is renumbered as 2453.213–71 and is revised to authorize the use of Form HUD–2542, Purchase Order and Payment Authorization, for any small purchase charged to the FHA Fund.

HUDAR 2453.237–70 is added to define the use of Form HUD–24002, GTR Performance Assessment (Final), to document contractor performance and the utility of products or services delivered.

Other Matters

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more persons. There are no new information collection requirements contained in these amendments to the HUDAR. The OMB Approval Number is 2535–0091.

Justification for Interim Rulemaking

The Department has determined that this rule should be adopted without the delay occasioned by requiring prior notice and comment because the majority of the changes either: implement FAR revisions already in effect that must be followed by HUD contracting personnel immediately; or, simply correct references to HUD organizational components consistent with the Department's field reorganization. Since this interim rule only makes conforming and clarifying changes to existing provisions, prior notice and comment are unnecessary under 24 CFR Part 10.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to the performance of accounting, auditing and fiscal functions and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility Act

As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely makes amendments to the Department's acquisition regulations that: simplify HUD's procurement process, revise internal HUD component references, and implement FAR

revisions without adding additional requirements.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule makes technical revisions and corrections to the agency's regulations. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves Departmental procurement procedures only.

Semiannual Agenda of Regulations

This rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368,) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Parts 2401, 2402, 2404, 2405, 2406, 2413, 2415, 2416, 2419, 2426, 2428, 2429, 2432, 2436, 2437, 2452 and 2453

Government procurement, HUD acquisition regulations.

Accordingly, title 48, Chapter 24 of the Code of Federal Regulations, is amended as follows:

PART 2401—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 2401 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2. The heading of subpart 2401.6 is revised to read as follows:

Subpart 2401.6—Career Development, Contracting Authority, and Responsibilities

3. Section 2401.601–73 is revised to read as follows:

2401.601–73 Administrative Service Centers.

Procurement of supplies and services for HUD field components is accomplished at the three Administrative Service Centers, each of which has a Contracting Division. The ASC Contracting Division Director may redelegate contracting authority to qualified personnel within their service area jurisdiction, consistent with the Department's published delegations of procurement authority and 2401.603.

4. Section 2401.602–3 is revised to read as follows:

2401.602–3 Ratification of unauthorized commitments.

(b)(1) *Policy.* A request for ratification shall be sent to the Contracting Officer through the Head of the Contracting Activity (HCA). The request will include an explanation as to the need for the service, the reason why normal procurement procedures were not followed, to what extent price competition was received or the price otherwise justified, and, corrective management actions to avoid ratifications in the future. If the justification is adequate, the ratification will be signed by the Contracting Officer and forwarded to the HCA or designee for approval.

(b)(3) The HCA may delegate authority to approve ratifications below the simplified acquisition threshold to:

(i) Contracting division directors (Headquarters); or,

(ii) Contracting branch chiefs (Field).

(c)(5) Legal concurrence may be requested if there is a legal issue involved, e.g. the propriety of the funding source, appropriateness of the expense, etc.

PART 2402—DEFINITIONS OF WORDS AND TERMS

5. The authority citation for part 2402 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

6. In § 2402.101, the definitions of *Head of Contracting Activity, Primary Organization Heads,* and *Source Selection Official* are revised, and the definitions of *Accounting Office, Best Value, Legal Counsel,* and *Lowest-Priced Technically Acceptable Proposal* are added in alphabetical order, to read as follows:

2402.101 Definitions.

Accounting Office means the Office of Finance and Accounting in headquarters or the Field Accounting Divisions in the field.

Best Value is an approach to source selection that considers the appropriate balance of technical merit, management capability, and cost/price factors in deciding which proposal offers the overall ''best value'' to the Government. A best value procurement permits the government to award a contract to an offeror with a higher price in order to obtain a better technical product or service with a lower risk that performance will be unsuccessful. The selection decision may be based on a determination of whether to tradeoff paying a higher price to obtain the added value of a particular proposal.

* * * * *

Head of Contracting Activity (HCA) is defined in accordance with the FAR. The following HUD officials are designated HCAs:

(1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement;

(2) The Directors, Administrative Service Center Contracting Divisions for field procurement;

(3) The President, Government National Mortgage Association (GNMA), for procurement transactions that are conducted by GNMA in accordance with 2401.601–72(c).

Legal Counsel means the Office of General Counsel in Headquarters, or the cognizant Assistant General Counsel in the field.

Lowest-Priced Technically Acceptable Proposal is an approach to source selection under which all evaluation factors, except price, are evaluated on a ''Pass-Fail'' basis. It is used when price will be the deciding factor once the technical acceptability of proposals has been determined.

Primary Organization Heads are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Deputy Secretary. The Primary Organization Heads of HUD include: the Assistant Secretaries, the Inspector General, and the General Counsel.

* * * * *

Source Selection Official means the head of the office initiating and providing funding for the procurement, or his/her designee. This role may also be delegated to the contracting officer.

PART 2404—ADMINISTRATIVE MATTERS

7. The authority citation for part 2404 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

8. The heading of subpart 2404.8 is revised to read as follows:

Subpart 2404.8—Government Contract Files

9. Section 2404.805–1 is redesignated as 2404.805 and amended by revising the section heading and paragraph (a), to read as follows:

2404.805 Storage, handling and disposal of contract files.

(a) Unsuccessful cost and technical proposals shall be retained in the contracting activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the contracting office shall either:

(1) Retain one copy of each such proposal with the official contract file; or,

(2) Ship one copy of each unsuccessful bid or proposal to the Federal Records Center unless a debriefing has been requested but not held, or a protest is pending concerning the procurement. In no event shall these documents be destroyed before expiration of the retention periods in FAR 4.805.

* * * * *

PART 2405—PUBLICIZING CONTRACT ACTIONS

10. The authority citation for part 2405 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d); and FAR class deviation approved November 15, 1990.

Subpart 2405.3—[Removed]

11. and 12. Subpart 2405.3 *Synopses of Contract Awards* is removed.

PART 2406—COMPETITION REQUIREMENTS

13. The authority citation for part 2406 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

14. Section 2406.304–70 is revised to read as follows:

2406.304–70 Approval of the justification—field procurements.

(a) The justification for other than full and open competition for field procurements shall be approved in writing—

(3) For a proposed contract more than $1 million but not exceeding $10 million, by the Director, Office of Procurement and Contracts.

2406.304–71 [Removed]

15. Section 2406.304–71 is removed.

16. Section 2406.501 is revised to read as follows:

2406.501 Requirement.

The Senior Procurement Executive shall designate the Department's competition advocate by **Federal Register** notice. Contracting activity-level competition advocates shall be appointed by each HCA.

PART 2413—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASING PROCEDURES

17. The authority citation for part 2413 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

18. The heading of part 2413 is revised to read as follows:

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES

2413.107 [Redesignated as 2413.106–2]

19. Section 2413.107 is redesignated as 2413.106–2 and revised to read as follows:

2413.106–2 Data to support purchases.

(d) Contracting officers may use Form HUD–24007, Purchase/Delivery Order Data File, to record all relevant data pertaining to a small purchase, including recording written and oral quotations received and documenting orders against GSA contracts.

2413.403 [Redesignated as 2413.402]

20. Section 2413.403 is redesignated as 2413.402 and revised to read as follows:

2413.402 Agency responsibilities.

(c) Policies and procedures governing the operation of imprest funds are established in internal directives issued by HUD's Office of the Chief Financial Officer.

2413.404 [Redesignated as 2413.403]

21. Section 2413.404 is redesignated as 2413.403 and revised to read as follows:

2413.403 Conditions for use.

(a) Transaction limits above that established in FAR 13.403(a) may be approved by the Senior Procurement Executive.

2413.505–2 [Redesignated as 2413.505–1]

22. Section 2413.505–2 is redesignated as 2413.505–1 and revised to read as follows:

2413.505–1 Optional Form (OF) 347, order for supplies and services, and Optional Form 348, order for supplies and services schedule-continuation.

(b) For small purchases charged to the FHA Fund, contracting officers may use Form HUD–2542, Purchase Order and Payment Authorization.

23. A new subpart 2413.6 and a new section 2413.601 are added to read as follows:

Subpart 2413.6—Micro-Purchase

2413.601 General.

(c) HUD's procedures concerning the use of the government-wide commercial purchase card are contained in its Handbook on the Government-wide Commercial Credit Card Program.

PART 2414—SEALED BIDDING

24. The authority citation for part 2414 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

25. Section 2414.406–4 is revised to read as follows:

2414.406–4 Mistakes after award.

(d) For determinations under FAR 14.406–4(b)(1) and (2), the Head of the Contracting Activity will obtain the concurrence of legal counsel before notification to the Contractor. The Contracting Officer shall be notified promptly of action to be taken.

PART 2415—CONTRACTING BY NEGOTIATION

26. The authority citation for part 2415 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

27. In section 2415.407, new paragraphs (b) and (c) are added, to read as follows:

2415.407 Solicitation provisions.

* * * * *

(b) The contracting officer shall use the language at Alternate I to request cost and pricing data when it is anticipated that a contract or subcontract resulting from this solicitation will exceed $500,000 in value. This language shall also be used for those instances when the contracting officer determines that full cost and pricing data are required pursuant to FAR 15.804–2(a)(3).

(c) In those instances when certified cost and pricing data are not required because an action is $500,000 or less, the contracting officer may request partial or limited data in order to determine a reasonable price (see FAR 15.804–6(a)(2)). The contracting officer shall request only that data which is considered necessary to determine a reasonable price. If partial or limited data is required, the contracting officer may adapt the content of Alternate I to

suit the circumstances of the procurement, or develop additional text as required.

2415.408 [Removed]

28. Section 2415.408 is removed.

2415.411 [Removed]

29. Section 2415.411 is removed.

2415.411–70 [Removed]

30. Section 2415.411–70 is removed.

31. Section 2415.604 is revised to read as follows:

2415.604 Responsibilities.

(b) The technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). Generally, a TEP will consist of three to five voting members, with one member serving as the chairperson. For more complex procurements, the TEP may add advisors and/or a committee structure to focus on specific technical issues or concerns. For inexpensive or routine acquisitions of equipment, supplies or services, the TEP may consist of one technical representative. The TEP is responsible for documenting the evaluation of all proposals as appropriate to the source selection approach in use, and for making the source selection recommendation(s).

(c)(4) The selection of the source(s) for contract award shall be made by:

(i) The contracting officer for awards using the ''lowest-priced technically-acceptable proposal'' approach; or,

(ii) The Source Selection Official (SSO) for awards based on the ''best value'' approach.

32. Section 2415.605 is revised to read as follows:

2415.605 Evaluation factors.

(c) The solicitation shall state the basis for the source selection decision as either ''lowest-priced technically-acceptable proposal'' (LPTAP) or ''best value'' (see 2402.1, Definitions).

(e) When using the best value approach, each technical evaluation factor and subfactor shall be assigned a numerical weight (except for pass-fail factors) which shall appear in the RFP. When using LPTAP, each evaluation factor is applied on a ''pass-fail'' basis; numerical scores are not assigned. ''Pass-Fail'' evaluation factors define a standard of comparison for solicitation/contract requirements which proposals either completely satisfy or fail to meet.

33. In section 2415.608, paragraph (a) is revised to read as follows:

2415.608 Proposal evaluation.

(a) After receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the TEP Chairperson or his or her designee. The cost/price portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the TEP.

(2) *Technical evaluation.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being either acceptable, unacceptable but capable of being made acceptable, or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Under the best value approach, predetermined cut-off scores designed to determine a threshold level of acceptability of proposals shall not be employed. However, under solicitations where mandatory requirements are established, those proposals that do not meet the mandatory requirements may be found unacceptable without further review.

(3) A technical evaluation report, which complies with FAR 15.608(a)(2), shall be prepared and signed by the technical evaluator(s), furnished to the contracting officer, and maintained as a permanent record in the official procurement file.

* * * * *

2415.609 [Removed]

34. Section 2415.609 is removed.

35. A new section 2415.611 is added to read as follows:

2415.611 Best and final offers.

(d) After receipt and evaluation of best and final offers, the TEP shall document its selection recommendation(s) in a final written report. The final report shall include sufficient information to support the recommendation(s) made, appropriate to the source selection approach and type and complexity of the acquisition.

2415.612 [Removed]

36. Section 2415.612 is removed.

2415.612–70 [Removed]

37. Section 2415.612–70 is removed.

38. In section 2415.613, paragraph (a) is revised to read as follows:

2415.613 Alternative source selection procedures.

(a) The Department of Housing and Urban Development uses procedures authorized by FAR 15.613 for all research and development contracts and other contracts where the contractor's proposed methodology of carrying out the work is a significant selection factor and the award decision will follow the best value approach.

* * * * *

39. Section 2415.613–70 is revised to read as follows:

2415.613–70 Technical evaluation.

The TEP shall perform the required technical evaluation of proposals received in accordance with 2415.608.

40. In section 2415.613–72, paragraph (a) is revised to read as follows:

2415.613–72 Selection and final negotiation.

(a) *Selection.* After the close of discussions and receipt of best and final offers, the TEP shall perform a final evaluation and prepare its selection recommendation for the SSO. Based on this evaluation, the SSO shall select for final contract negotiation the offeror(s) whose proposal is most advantageous to the Government in terms of price/cost, technical and other relevant factors included in the solicitation.

* * * * *

PART 2416—TYPES OF CONTRACTS

41. The authority citation for part 2416 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

Subpart 2416.3—[Removed]

42–44. Subpart 2416.3—*Cost-Reimbursement Contracts* is removed.

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

45. The authority citation for part 2426 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2426.1—[Redesignated as Subpart 2426.70]

46. The heading, subpart 2426.1—*Minority Business Enterprises,* is redesignated as subpart 2426.70.

2426.101 [Removed]

47. Section 2426.101 is removed.

2426.102 [Removed]

48. Section 2426.102 is removed.

2426.103 [Removed]

49. Section 2426.103 is removed.

Subpart 2426.2—[Removed]

50–51. Subpart 2426.2—*Historically Black Colleges and Universities* is removed.

52. A new section 2426.701 is added, to read as follows:

2426.701 Policy.

It is the policy of the Department to foster and promote Minority Business

Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission. A ''minority business enterprise'' is a business which is at least 51 percent owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members are those groups of U.S. citizens found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act.

53. A new section 2426.702 is added, to read as follows:

2426.702 Responsibility.

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) develops Departmental MBE plans and policies in accordance with Executive Orders 11625 and 12432 and by directive from the Secretary. He or she provides advice and guidance to the Secretary and Primary Organization Heads on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals, monitors and evaluates the Department's MBE program, and reports on MBE program performance to the Department of Commerce.

54. A new section 2426.703 is added, to read as follows:

2426.703 Solicitation provision.

Contracting officers shall request all interested contractors, bidders, or offerors (including those responding to requests for quotations) to complete the certification at 2452.226–70, Certification of Status as a Minority Business Enterprise. Completion of this certification is voluntary and is not a condition of eligibility for contract award.

PART 2428—BONDS AND INSURANCE

55. The authority citation for part 2428 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2428.2—[Removed]

56.–58. Subpart 2428.2—*Sureties* is removed.

PART 2429—TAXES

59. The authority citation for part 2429 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

60. Section 2429.101 is revised to read as follows:

2429.101 Resolving tax problems.

In order to have uniformity in HUD's treatment of the tax aspects of contracting and ensure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within HUD for handling all those tax problems. Therefore, the contracting activity will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the Contracting Officer shall request, in writing, the assistance of legal counsel. The request shall detail the problem and be accompanied by appropriate backup data. Counsel shall report to the Contracting Officer as to the necessary disposition of the tax problem. The Contracting Officer will notify the contractor of the outcome of the tax problem. Counsel is responsible for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

PART 2432—CONTRACT FINANCING

61. The authority citation for part 2432 continues to read as follows:

Authority: 31 U.S.C. 3901–3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

62. Section 2432.402 is revised to read as follows:

2432.402 General.

(e)(1) The Determination and Findings required by FAR 32.402(c)(1)(iii) shall be made by the Director, Office of Procurement and Contracts for Headquarters contracts, or the cognizant Director, Administrative Services Center Contracting Division for field contracts.

(2) Each advance payment situation shall be coordinated with the head of the cognizant accounting office, before authorization may be given, to ensure that there are controls in place to assure proper administration of advance payments.

63. Section 2432.906 is revised to read as follows:

2432.906 Contract financing payments.

Except for construction contracts (see FAR 52.232–27), periods for payment shorter than 30 days shall not be specified in contracts without the prior approval of the cognizant accounting office to ensure that procedures are in place to allow timely payment.

64. Section 2432.908 is revised to read as follows:

2432.908 Contract clauses.

(a) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232–70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts. The clause with its Alternate I may be used for solicitations and contracts issued by the Administrative Service Centers.

(b) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232–71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office. The clause with its Alternate I may be used for solicitations and contracts issued by the Administrative Service Centers.

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

65. The authority citation for part 2436 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

66. In section 2436.602–2, paragraphs (a) introductory text, (a)(2), and (c) are revised, and paragraph (a)(3) is removed, to read as follows:

2436.602–2 Evaluation boards.

(a) Each architect-engineer evaluation board, whether permanent or ad hoc (which may include preselection boards), shall consist of at least three voting members who are Federal employees from the appropriate program area or from Federal offices outside the program area as appropriate. One member of each board shall be appointed chairperson. Non-voting advisors may also be appointed, including private practitioners in architecture, engineering and related professions. The members of a permanent board shall be appointed for a period of two years. Appointment shall be made by the following authorities with copies of appointment memoranda furnished to the appropriate contracting activity:

(1) * * *

(2) The cognizant program office head within the State or Area Office for boards appointed at the field level.

(c) *Conflict of interest.* Each board member, whether voting or nonvoting, shall be advised of, and presumed to be familiar with the regulations at 24 CFR Part 0, Standards of Conduct, regarding conflicts of interest. If at any time during the selection process a board member encounters a situation with one or more of the firms being considered that might be or might appear to be a conflict of interest, he or she will

disqualify him or herself and call it to the attention of the chairperson for resolution and proper action. The chairperson will refer the matter to legal counsel.

* * * * *

67. Section 2436.602–4 is revised to read as follows:

2436.602–4 Selection authority.

(a) The final selection decision shall be made by the appropriate Primary Organization Head (Headquarters) or the appropriate program office head at the cognizant State or Area Office (Field).

PART 2437—SERVICE CONTRACTING

68. The authority citation for part 2437 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

69. Section 2437.205 is revised to read as follows:

2437.205 Management controls.

Documentation of the contractor's performance and the utility of products or services delivered shall be recorded on Form HUD–24002, GTR Performance Assessment (Final) by the responsible Government Technical Representative. This form may also be used to document contractor performance on other contracts.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

70. The authority citation for part 2452 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

71. Section 2452.215–70 is revised to read as follows:

2452.215–70 Proposal content and outline.

As prescribed in 2415.407(a), insert the following solicitation provision in all negotiated solicitations over the small purchase limitation:

PROPOSAL CONTENT AND OUTLINE (Insert Month, Year)

(a) Proposals shall be submitted in two separate parts as further described below and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The envelope must show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror. Part I shall consist of the technical and management submittal of the proposed work. Part II shall consist of a business proposal comprised of, cost and pricing data, (if required), and the offeror's representations and certifications. Each part of the proposal shall be complete in itself so that the evaluation of both parts can be accomplished concurrently, and the evaluation of the technical and management submittal can be made strictly on the basis of its merit.

(b) Proposals shall be submitted in [insert number] copies of each Part I and [insert number] copies of Part II.

(c) Part I—Technical and Management

Section 1: Proposal Coverage. Cover the scope of work and general objectives which the proposal addresses.

Section 2: Tasks and Methods. Describe the principal tasks or sub-projects to be undertaken together with a discussion of their relationships to each other. Discuss the considerations for selecting, performing and the time sequencing of the tasks or sub-projects. Describe and discuss the method of personnel training and field personnel recruitment and the method of project control to be applied to the project to ensure timely, professional and quality performance. The Contractor must clearly state his/her plans for project management and in providing current and updated project progress to HUD during those phases of Contractor performance that require substantial coordination with HUD personnel.

Section 3: Organization and Staffing. Include an organizational chart for the project showing the name of the project manager and the names of key personnel. Include a brief resume for each person shown on the special qualifications applicable to the performance of the project. Describe the specific effort to be contributed to the project by each of the key personnel and include a statement expressed either in percentage or person-hours that each will devote to the effort. Include a summation of the minimum person-hours or person-months of professional effort to be used in completing the project. Describe the physical facilities to be used. If consultants, advisors or subcontractors are to be used, describe the arrangements and include resumes of the Key personnel.

Section 4: Prior and Current Experience. Include a list of projects currently in progress and/or completed within the last two years which are relevant to this procurement. Include names, addresses, and telephone numbers of contact points with these clients. The Government reserves the right to request information from any source so named.

Section 5: Conflicting or Multiple Use of Contractor Resources. Include a description of the contractor's current or planned projects that may draw upon resources or personnel, including top management, proposed to be committed to this project. Explain how such conflicting or multiple uses will be resolved to avoid impairing the timely, professional, and high-quality performance of this project. If the proposer has one or more existing HUD projects that will run concurrently with this project, explain how the level of attention described in the proposal will be preserved across projects.

The Government reserves the right to downgrade the related Factor for Award score for any proposal that does not adequately and credibly address such conflicts or multiple uses.

Section 6: Security Investigation. The offeror shall address in its technical proposal how it intends to manage the security of automated systems as required by HUDAR clause 2452.237–76. This includes developing security procedures, requesting background investigations for employees and subcontractors as required, and requesting investigations for replacements of such individuals as necessary due to turnover, rotation, or other reasons.

(d) Part II—Business Proposal

Section 1: Representations and Certifications. The Offeror's Representations and Certifications provided in Section K of this solicitation shall be included in this section.

(End of provision)

ALTERNATE I (Insert Month, Year)

This alternate shall be used as prescribed at 2415.407(b) when the submission of cost and pricing data are required. In such cases, add the following Section 2 to paragraph (d) of the basic provision:

Section 2: Cost and Pricing Data. The offeror shall furnish cost or pricing data using the SF–1411, Contract Pricing Proposal, provided in Section L of this solicitation, and the instructions attached to it, which are also printed at FAR 15.804–6. Round all amounts to the nearest dollar. Your data will be subject to review and evaluation by various Government personnel, and thus the estimates furnished on the SF–1411 should be supported by the required supplementary data so that the review and evaluation can be conducted with a minimum amount of delay and effort. In particular, ensure that the following essential elements are provided:

(i) A summary of total cost by cost element cross-referenced to each proposed contract line item (instruction number 1).

(ii) Identification of the basis for the kinds, quantities, and cost of all material elements proposed; and a consolidated priced summary of individual material quantities, or a consolidated priced bill of material (BOM), for the entire proposal. A well prepared BOM includes: part number/description, unit cost, quantity required, any nonrecurring costs, extended cost, and basis for the proposed price (quotation, prior buy, similar item, etc.) (instruction number 1, Materials).

(iii) For each subcontract over $500,000 show: source, deliverable, quantity, price, type of subcontract, degree of competition, basis for selecting vendor and establishing reasonableness of price. When required, the subcontractor's cost or pricing data must be submitted with the offeror's initial proposal. If available and if required by FAR 15.806, the contractor should provide the results of review and evaluation of subcontract proposals. Though not required, the offeror should provide reasons for omitted data/reviews with dates when the data/reviews will be available (instruction number 1, Materials).

(iv) A Justification, submitted on an SF–1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when claiming an exemption from submitting cost or pricing data (instruction number 1, Materials).

(v) A time phased, e.g., quarterly, annual, breakdown of labor rates and hours by category or skill level, and the basis for the estimates of rates and hours, e.g., historical experiences, engineering estimates, learning curves, etc. If labor is the allocation base for indirect costs, summarize for each overhead pool and year (instruction number 1, Direct Labor).

(vi) In the absence of a forward pricing rate agreement or indirect rate proposal, the contractor should show how indirect rates were estimated and applied as a basis for evaluating the reasonableness of the proposed rates. Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data (instruction number 1, Indirect Costs).

(vii) Identification of all other costs by category and basis for pricing (instruction number 1, Other Costs).

(viii) When claiming cost of money, the contractor must submit Form CASB–CMF and show the calculation of the proposed amount (instruction number 1, Facilities Capital Cost of Money).

(ix) Identification of cost or pricing data, i.e., data that are verifiable and factual, and an explanation of the estimating process. When applicable, the following items should be specifically identified:

(A) Judgmental factors and the methods used in the estimate, including those used in projecting from known data; and

(B) The nature and amount of any contingencies (instruction number 2).

(x) An index referencing all cost or pricing data and information accompanying or identified in the proposal (instruction number 4).

(xi) For change order proposals: an estimate of the cost to complete deleted work not yet performed; identification of the actual or estimated cost of deleted work already performed; and an estimate of the cost of work added (instruction number 7B).

(End of provision)

72. In section 2452.219–70, the section heading and Alternate I are revised to read as follows (and footnote 8 is removed):

2452.219–70 Small Business and Small Disadvantaged Business Subcontracting Plan.

* * * * *

ALTERNATE I (DEC 1992)

This alternate is required for all sealed bid solicitations exceeding $500,000 ($1,000,000 for construction) that are not set aside for small business. In such cases, insert the following paragraph (d) for that in the basic clause:

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219–9, ''Small Business and Small Disadvantaged Business Subcontracting Plan (Alternate I).'' The offeror submitting the apparent low bid, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a part of the resultant contract. The Contracting Officer will review the adequacy of the subcontracting plan as part of the responsibility determination (FAR subpart 9.1). Failure to submit an adequate subcontracting plan where applicable shall make the offeror ineligible for the contract award.

(End of provision)

73. Section 2452.226–70 is revised to read as follows:

2452.226–70 Certification of status as a minority business enterprise.

As prescribed in 2426.703, insert the following provision in all solicitations:

CERTIFICATION OF STATUS AS A MINORITY BUSINESS ENTERPRISE

(August 1995)

Bidder, Offeror or Supplier certifies that he or she _____ is, _____ is not, (check one), a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the box applicable to you)

[ ] Black Americans
[ ] Hispanic Americans
[ ] Native Americans
[ ] Asian Pacific Americans
[ ] Asian Indian Americans

74. In section 2452.232–70, Alternate I is revised to read as follows:

2452.232–70 Payment schedule and invoice submission (fixed-price).

* * * * *

ALTERNATE I (MAR 1988)

This alternate may be used in fixed-price contracts awarded by the Administrative Service Centers. In such cases, substitute the following paragraph (c) for that in the basic clause:

(c) Invoices shall be submitted in an original and three (3) copies to the office identified on the cover page of the contract (SF–26 or SF–33). To constitute a proper invoice, the invoice must include all items per FAR 52.232–25, ''Prompt Payment.''

75. In section 2452.232–71, Alternate I is revised to read as follows:

2452.232–71 Voucher submission (cost-reimbursement).

* * * * *

ALTERNATE I (MAR 1988)

This alternate may be used in cost-reimbursement contracts awarded by the Administrative Service Centers. In such cases, substitute the following paragraph (a) for that in the basic clause:

(a) The Contractor shall submit, on a monthly basis [Contracting Officer may substitute a different time frame, if appropriate], an original and three (3) copies of each voucher. In addition to the items necessary per FAR 52.232–25, ''Prompt Payment,'' the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the Contracting Officer specified on the cover page of the contract (SF–26 or SF–33).

75a. In section 2452.237–77, footnote 9 is redesignated as footnote 8.

PART 2453—FORMS

76. The authority citation for part 2453 is revised to read as follows:

2452.237–77 [Footnote 9 redesignated as Footnote 8]

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

77. Section 2453.213–71 is revised to read as follows:

2453.213–71 HUD Form 2542, Purchase Order and Payment Authorization.

As prescribed in 2413.505–2(b), Contracting Officers may use HUD Form 2542 for small purchases charged to the FHA Fund.

2453.213–72 [Removed]

78. Section 2453.213–72 is removed.

79. A new section 2453.237–70 is added, to read as follows:

2453.237–70 HUD Form 24002, GTR Performance Assessment (Final).

As prescribed in 2437.205, Government Technical Representatives shall use HUD Form 24002 to document the contractor's performance and the utility of products or services delivered. This form may also be used for other contracts.

Dated: August 2, 1995.

Marilynn A. Davis,

Assistant Secretary for Administration.

[FR Doc. 95–21767 Filed 9–1–95; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[Docket No. FR–3887–N–02]

Notice of Competition Advocate Designation Under the HUD Acquisition Regulation

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of competition advocate designation.

SUMMARY: This notice designates the Deputy Assistant Secretary for Resource Management and Operations of the Office of the Assistant Secretary for Administration as the HUD Competition Advocate in accordance with the newly-revised 24 CFR 2406.501.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Room 5262, 451 Seventh Street, SW., Washington, DC 20410–3000 (voice (202) 708–0294, TDD (202) 708–1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. The HUD Acquisition Regulation (HUDAR) was first promulgated to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 9, 1985 (50 FR 42097); and the general authorization in FAR 1.301.

The purpose of this notice is to implement a recent change to the HUDAR at 48 CFR 2406.501, which provides that the Senior Procurement Executive shall designate the Department's Competition Advocate by **Federal Register** notice.

Accordingly, the Assistant Secretary for Administration, HUD, designates the Deputy Assistant Secretary for Resource Management and Operations of the Office of the Assistant Secretary for Administration as the HUD Competition Advocate.

Dated: August 2, 1995.

Marilynn A. Davis,

Assistant Secretary for Administration.

[FR Doc. 95–21768 Filed 9–1–95; 8:45 am]

BILLING CODE 4210–01–M

federal register

Tuesday
September 5, 1995

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

Federal Acquisition Regulation (FAR); Agency Information Collection Activities Under OMB Review; Notices

DEPARTMENT OF DEFENSE

GERERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0097]

Clearance Request for Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number)

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 (9000–0097).

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 Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number).

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION

A. Purpose

Subpart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the provision at 52.204–3, Taxpayer Identification, implement statutory and regulatory requirements pertaining to taxpayer identification and reporting. This amendment further revises 4.9 and the provision at 52.204–3 to require the collection and reporting of the Taxpayer Identification Number (TIN) of certain contract modifications. A determination was made that additional FAR coverage was necessary in order to ensure that these contract actions are reported to the Internal Revenue Service.

When the Internal Revenue Service issued its final regulations implementing section 6050M of the Tax Reform Act of 1986 (Pub. L. 99–514), the reporting requirements included the requirement to report certain modifications to contracts that were awarded before January 1, 1989. It was determined that additional FAR coverage was required.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *6* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *250,000*; responses per respondent, *12*; total annual responses, *3,000,000*; preparation hours per response, *.10*; and total response burden hours, *300,000*.

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. 9000–0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number), in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21790 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0037]

Clearance Request for Presolicitation Notice and Response, Standard Form 1417

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 (9000–0037).

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 Presolicitation Notice and Response, Standard Form 1417.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time, and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice response is used to determine the number of solicitation documents needed and to assure that interested offerors receive the solicitation documents. The responses are placed in the contract file and referred to when solicitation documents are ready for mailing. After mailing, the responses remain in the contract file and become a matter of record.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per completion, 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, *5,900*; responses per respondent, *8*; total annual responses, *47,200*; preparation hours per response, *.167*; and total response burden hours, *7,882*.

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. 9000–0037, Presolicitation Notice and Response, Standard Form 1417, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21791 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0036]

Clearance Request for Information Regarding Previous Contracts

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 (9000–0036).

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 Information Regarding Previous Contracts.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the same item or class of items is being acquired by more than one agency, the exchange and coordination of pertinent information, particularly cost and pricing data, is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. For this reason, the contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, must request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components. This information is particularly beneficial during the period of acquisition planning, presolicitation, evaluation, and preaward survey. The information is used to determine a firm's responsibility.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *2,000*; responses per respondent, *10*; total annual responses, *20,000*; preparation hours per response, *.25*; and total response burden hours, *5,000*.

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. 9000–0036, Information Regarding Previous Contracts, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21792 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0033]

Clearance Request for Contractor's Signature Authority

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 (9000–0033).

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 Contractor's Signature Authority.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Entities doing business with the Government must identify those persons who have authority to bind the principal. This information is needed to ensure that Government contracts are legal and binding. The information is used by the contracting officer to ensure that authorized persons sign contracts.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 minute per completion, 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, *12,000*; responses per respondent, *10;* total annual responses, *120,000*; preparation hours per response, *.017*; and total response burden hours, *2,040*.

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. 9000–0033, Contractor's Signature Authority, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21793 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0030]

Clearance Request for Sale of Used Items to the Government

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 (9000–0030).

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 Sale of Used Items to the Government.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Government does not normally purchase used items. Therefore, when a contractor proposes the substitution of a used item for a new item, data must be furnished to the contracting officer so the proposal can be properly evaluated. A description of the item, quantity, date of acquisition, source, and monetary advantages to the Government are the basic data necessary to evaluate the proposal. Upon completion of the contracting officer's evaluation and

determination, the data is placed in the contract file and becomes a matter of record.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.25* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *790;* responses per respondent; *4;* total annual responses, *3,160;* preparation hours per response, *.25;* and total response burden hours, *790*.

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. 9000–0030, Sale of Used Items to the Government, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21794 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0029]

Clearance Request for Extraordinary Contractual Action Requests

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 (9000–0029).

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 Extraordinary Contractual Action Requests.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This request covers the collection of information as a first step under Public Law 85–804, as amended by Public Law 93–155 and Executive Order 10789 dated November 14, 1958, that allows contracts to be entered into, amended, or modified in order to facilitate national defense. In order for a firm to be granted relief under the Act, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract.

The information is used by the Government to determine if relief can be granted under the Act and to determine the appropriate type and amount of relief.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *16* hours (or minutes) per completion, 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, *100*; responses per respondent, *1*; total annual responses, *100*; preparation hours per response, *16*; and total response burden hours, *1,600*.

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. 9000–0029, Extraordinary Contractual Action Requests, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21795 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0028]

Clearance Request for Termination Requirements

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 (9000–0028).

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 Termination Requirements.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Contracting officers terminate contracts, for default or convenience, only when it is in the best interest of the Government to do so. After receipt of the notice of termination, contractors are required to terminate subcontracts, advise the contracting officer of any special circumstances, submit any requests for an equitable adjustment, submit a settlement proposal, and take other action as directed. Records regarding the terminated contract must be maintained for 3 years.

The information submitted or retained in connection with contract termination is used to reach an equitable settlement with firms and to protect the interests of the Government and the terminated contractor.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *3* 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, *2,920*; responses per respondent, *1*; total annual responses, *2,920*; preparation hours per response, *3*; and total response burden hours, *8,760*; and total recordkeeping hours, *2,920*.

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. 9000–0028, Termination Requirements, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21796 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0025]

Clearance Request for Buy American Act, Trade Agreements Act, Balance of Payments Program Certificate

AGENCY: 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 (9000–0025).

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 Buy American Act, Trade Agreements Act, Balance of Payments Program Certificate.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Trade Agreements Act of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation not to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic end products. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the Untied States or a designated country of the Act.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *1,140;* responses per respondent, *10;* total annual responses, *11,400;* preparation hours per response, *.167;* and total response burden hours, *1,904.*

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. 9000–0025, Buy American Act, Trade Agreements Act, Balance of Payments Program Certificate, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21797 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0024]

Clearance Request for Buy American Certificate

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 (9000–0024).

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 Buy American Certificate.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Buy American Act requires that only domestic end products be acquired for public use unless specifically authorized by statute or regulation, provided that the cost of the domestic products is reasonable.

The Buy American Certificate provides the contracting office with the information necessary to identify which products offered are domestic end products and which are of foreign origin. Components of unknown origin are considered to have been supplied from outside the United States.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th and F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *2,663*; responses per respondent, *20*; total annual responses, *53,260*; preparation hours per response, *167*; and total response burden hours, *8,894*.

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. 9000–0024, Buy American Certificate, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21798 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0022]

Clearance Request for Customs and Duties

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 (9000–0022).

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 Customs and Duties.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. These exemptions are used whenever the anticipated savings outweigh the administrative costs associated with processing required documentation. When a Government contractor purchases foreign supplies, it must notify the contracting officer to determine whether the supplies should be duty-free. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

The contracting officer analyzes the information submitted by the contractor to determine whether or not supplies should enter the country duty-free. The information, the contracting officer's determination, and the U.S. Customs forms are placed in the contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *1,330*; responses per respondent, *10*; total annual responses, *13,300*; preparation hours per response, *.5*; and total response burden hours, *6,650*.

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. 9000–0022, Customs and Duties, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21799 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0018]

Clearance Request for Certification of Independent Price Determination and Parent Company and Identifying Data

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 (9000–0018).

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 Certification of Independent Price Determination and Parent Company and Identifying Data.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (*e.g.*, collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General.

As a first step in assuring that Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.04 hours for the first completion, .0083 hours for subsequent completions, or an average of .01 hours per completion,* 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, *64,250*; responses per respondent, *20*; total annual responses, *1,285,000*; preparation hours per response, *.02*; and total response burden hours, *25,700*.

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. 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21800 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0001]

Clearance Request for Standard Form 28, Affidavit of Individual Surety

AGENCY: 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 (9000–0001).

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 Standard Form 28, Affidavit of Individual Surety.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Affidavit of Individual Surety (Standard Form (SF) 28) will be used by all executive agencies, including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds.

In order to qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other formats exist for the collection of this information.

The information on SF 28 will be used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.4* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *500*; responses per respondent, *1.43*; total annual responses, *715*; preparation hours per response, *.4*; and total response burden hours, *286*.

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. 9000–0001, Standard Form 28, Affidavit of Individual Surety, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21801 Filed 9–01–95; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Tuesday
September 5, 1995

Part IV

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Risk-Based Capital Standards: Derivative Transactions; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–20]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0845]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB43

Risk-Based Capital Standards: Derivative Transactions

AGENCIES: Office of the Comptroller of the Currency (OCC), Department of the 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 (the banking agencies) are amending their respective risk-based capital standards for banks and bank holding companies (banking organizations, institutions). This final rule implements a recent revision to the Basle Accord revising and expanding the set of conversion factors used to calculate the potential future exposure of derivative contracts and recognizing the effects of netting arrangements in the calculation of potential future exposure for derivative contracts subject to qualifying bilateral netting arrangements. The effect of this final rule is threefold. First, long-dated interest rate and exchange rate contracts are subject to higher conversion factors and new conversion factors are set forth that specifically apply to derivative contracts related to equities, precious metals, and other commodities. Second, institutions are permitted to recognize a reduction in potential future credit exposure for transactions subject to qualifying bilateral netting arrangements. Third, derivative contracts related to equities, precious metals and other commodities may be recognized in bilateral netting arrangements for risk-based capital purposes.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: *OCC:* For issues relating to netting and the calculation of risk-based capital ratios, Roger Tufts, Senior Economic Advisor (202/874–5070), Office of the Chief National Bank Examiner. For legal issues, Eugene H. Cantor, Senior Attorney, Securities and Corporate Practices (202/874–5210), or Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202/874–5090), Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Roger Cole, Deputy Associate Director (202/452–2618), Norah Barger, Manager (202/452–2402), Robert Motyka, Supervisory Financial Analyst (202)/452–3621), Barbara Bouchard, Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation; or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the Hearing Impaired only, Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544), 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: William A. Stark, Assistant Director, (202/898–6972), Curtis Wong, Capital Markets Specialist, (202/898–7327), Division of Supervision, or Jeffrey M. Kopchik, Counsel, (202/898–3872), Legal Division, FDIC, 550 17th St., N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Basle Accord [1] established a risk-based capital framework for assessing capital adequacy that was implemented in the United States by the banking agencies in 1989. Under this framework, off-balance-sheet transactions are incorporated into the risk-based structure by converting each item into a credit equivalent amount that is then assigned to the appropriate credit risk category according to the identity of the obligor or counterparty, or if relevant, the guarantor or the nature of collateral.

The credit equivalent amount of an off-balance-sheet interest rate or exchange rate contract (rate contract) is determined by adding together the current replacement cost (current exposure) of the contract and an estimate of the possible increase in future replacement cost (potential future exposure, also referred to as the add-on) in view of the volatility of the current exposure of the contract. The maximum risk category for rate contracts is 50 percent.[2]

Current Exposure

For risk-based capital purposes, a rate contract with a positive mark-to-market value has a current exposure equal to that market value. If the mark-to-market value is zero or negative, then the current exposure is zero. The sum of current exposures for a defined set of contracts is sometimes referred to as the gross current exposure for that set of contracts. When they were initially issued, the Basle Accord and the banking agencies' risk-based capital standards provided, generally, that current exposure would be determined individually for each rate contract entered into by a banking organization.

In July 1994 the Basle Accord was revised to permit institutions to net, that is, offset, positive and negative mark-to-market values of rate contracts entered into with a single counterparty subject to a qualifying, legally enforceable, bilateral netting arrangement. Effective at year-end 1994, the banking agencies each amended, in a uniform manner, their risk-based capital standards to implement the revision to the Accord.[3] Accordingly, U.S. banking organizations with qualifying, legally enforceable, bilateral netting arrangements may replace the gross current exposure of a set of contracts included in such an arrangement with a single net current exposure for purposes of determining the credit equivalent amount for the included contracts.

Potential Future Exposure

The potential future exposure portion of the credit equivalent amount for rate contracts is an estimate of the additional credit exposure that may arise as a result of fluctuations in prices or rates. The add-on for potential future exposure is estimated by multiplying the notional principal amount [4] of the contract by a credit conversion factor that is determined by the remaining maturity of the contract and the type of

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

[2] Exchange rate contracts with an original maturity of 14 calendar days or less and instruments traded on exchanges that require daily receipt and payment of cash variation margin are excluded from the risk-based capital ratio calculations.

[3] The Board issued its amendment on December 7, 1994 (59 FR 62987), the OCC and FDIC issued their amendments on December 28, 1994 (59 FR 66645 for the OCC final rule and 59 FR 66656 for the FDIC final rule).

[4] The notional principal amount is a reference amount of money used to calculate payment streams between counterparties.

contract. The original conversion factors in the Basle Accord and the banking agencies' risk-based capital standards are set forth in the following matrix:

Remaining maturity	Interest rate (in percent)	Exchange rate (in percent)
One year or less	0	1.0
Over one year	0.5	5.0

An individual add-on for potential future exposure is calculated for all rate contracts regardless of whether the market value is zero, positive, or negative, or whether the current exposure is calculated on a gross or net basis. The banking agencies' recent amendments to expand the recognition of bilateral netting arrangements did not revise the calculation of the add-on for potential future exposure. Accordingly, an add-on is calculated separately for each individual contract subject to a qualifying bilateral netting arrangement. These individual potential future exposures are added together to arrive at a gross add-on amount. The gross add-on amount is added to the net current exposure to determine one credit equivalent amount for the contracts subject to the qualifying bilateral netting arrangement.

Commenters to the Basle proposal to expand the recognition of bilateral netting arrangements urged regulators to also recognize reductions in potential future credit exposure arising from such arrangements. They also commented that commodity and equity derivative transactions should be eligible for netting for risk-based capital purposes. Accordingly, in July 1994 the Basle Supervisors Committee proposed revisions to the Basle Accord regarding the risk-based capital treatment of derivative transactions.[5] Under the proposed revision, the matrix of conversion factors used to calculate potential future exposure would be expanded to take into account innovations in the derivatives markets. Specifically, the Basle Committee proposed that higher conversion factors be added to address long-dated transactions (that is, contracts with remaining maturities over five years) and new conversion factors be added to explicitly cover certain types of derivatives transactions not directly mentioned by the Accord when it was endorsed in 1988. These include commodity-, precious metal-, and equity-linked derivative transactions.[6] The proposed revision also would have formally extended the recognition of qualifying bilateral netting arrangements to commodity, precious metal, and equity derivative contracts so that these types of transactions could be netted when determining current exposure for the netting contract. In addition, the proposed revision set forth a formula for institutions to employ in recognizing reductions in the potential future exposure of derivatives contracts that can result from entering into qualifying bilateral netting arrangements.

II. The Agencies' Proposals

After the Basle Supervisors Committee issued its proposed revisions to the Basle Accord, the banking agencies each issued for public comment proposals to amend their respective risk-based capital standards based on the international proposal.[7] The agencies' proposed conversion factor matrix is set forth below:

CONVERSION FACTOR MATRIX [1]

[Amounts in percent]

Residual maturity	Interest rate	Foreign exchange and gold	Equity [2]	Precious metals, except gold	Other commodities
Less than one year	0.0	1.0	6.0	7.0	12.0
One to five years	0.5	5.0	8.0	7.0	12.0
Five years or more	1.5	7.5	10.0	8.0	15.0

[1] For contracts with multiple exchanges of principal, the factors are to be multiplied by the number of remaining payments in the contract.
[2] For contracts that automatically reset to zero value following a payment, the remaining maturity is set equal to the time remaining until the next payment.

The proposed matrix was designed to accommodate a variety of contracts and was intended to provide a reasonable balance between precision, on the one hand, and complexity and burden, on the other.

The agencies also proposed the same methodology as the Basle Supervisors Committee to calculate a reduction in the add-on amount for contacts subject to qualifying bilateral netting arrangements. Under the agencies' proposals, institutions would apply the following formula[8] to adjust the amount of the add-on for potential future exposure:

$$A_{net} = 0.5(A_{gross} + (NGR \times A_{gross}))$$

Where A_{net} is the adjusted add-on for all contracts subject to the netting arrangement, A_{gross} is the amount of the add-on as calculated under the current agency standards, and NGR is the ratio of the net current exposure of the set of contracts included in the netting arrangement to the gross current exposure of those contracts. The proposals would have given partial credit to the effect of the NGR by applying a weighted averaging factor of 0.5.

Under the proposals, institutions would calculate a separate NGR for each counterparty with which it has a qualifying bilateral netting contract. The proposals requested general comments as well as specific comment as to whether the NGR should be calculated on a counterparty-by-counterparty basis or on an aggregate basis for all contracts subject to qualifying bilateral netting arrangements.

[5] The proposed revisions are contained in a document entitled ''The capital adequacy treatment of the credit risk associated with certain off-balance-sheet items'' that is available upon request from the Board's or OCC's Freedom of Information Offices or the FDIC's Office of the Executive Secretary.

[6] In general terms, these are off-balance-sheet derivative contracts that have a return, or a portion of their return, linked to the price or an index of prices for a particular commodity, precious metal, or equity. These types of transactions were not specifically addressed in the 1988 Accord (or in the banking agencies' original risk-based capital standards) because they were not prevalent in the derivatives markets at that time.

[7] The Board issued its proposal on August 24, 1994 (59 FR 43508), the OCC issued its proposal on September 1, 1994 (59 FR 45243), and the FDIC issued its proposal on October 19, 1994 (59 FR 52714).

[8] This formula may also be expressed as: $A_{net} = (1-P)A_{gross} + P(NGR \times A_{gross})$ [P or policy factor = 0.5].

III. Comments Received

The banking agencies together received nineteen public comments on their proposed amendments. Fifteen of the commenters were banks and bank holding companies and four were industry trade associations and other organizations. Commenters generally supported the proposed amendments, in particular the recognition of the effects of bilateral netting arrangements in the calculation of potential future exposure, and several urged adoption of the amendments as soon as possible. Commenters offered suggestions and opinions on several aspects of the proposals including the conversion factors, the formula for recognizing potential future exposure, ways of calculating the NGR, and recognizing additional risk-reducing techniques.

Expanded Matrix

Over one half of the commenters addressed the proposed expanded conversion factor matrix. Of these commenters, most indicated the proposed factors were generally reasonable and acceptable. Several commenters discussed the underlying assumptions used in the simulation models for arriving at the proposed factors for commodity transactions and expressed concern that the conversion factors for certain commodity derivative transactions were too high. One commenter suggested the conversion factor for commodity contracts across all time bands should be twelve percent. Another commenter expressed the view that the proposed conversion factor for interest rate contracts with remaining maturities greater than five years (1.5 percent) was an excessive increment over the current 0.5 percent conversion factor for interest rate contracts with remaining maturities greater than one year. This commenter suggested an additional time band for interest rate contracts with five to eight years remaining maturity and a corresponding conversion factor of 1.0 percent. Another commenter suggested there should be no capital charge for potential future exposure for commodity contracts based on two floating indices.

One commenter supported continuing the existing time band of ''one year or less'' as opposed to the proposed time band of ''less than one year.'' Two commenters expressed the view that the proposed time band for contracts with remaining maturities greater than five years was unnecessary. One commenter suggested adding a time band and appropriate conversion factors for contracts with remaining maturities between one and two years.

Several commenters discussed the matrix footnotes. One suggested extending the footnote applicable to equity contracts with automatic reset features following a payment to any derivative contract with effective early termination or periodic reset features. With regard to the footnote pertaining to contracts with multiple exchanges of principal, one commenter requested further clarification on the types of contracts included, while another expressed the view that multiplying the conversion factor by the number of remaining payments in a contract was too conservative. A few commenters recommended clarification as to the appropriate capital treatment when transactions are leveraged or enhanced by a stated multiple.

Netting and Potential Future Exposure

A number of commenters discussed the proposed formula for recognizing the effects of bilateral netting arrangements in the calculation of potential future exposure. Most of these commenters supported the use of the NGR as a reasonable proxy to estimate the risk-reducing benefits of netting arrangements. Several commenters supported giving full weight to the NGR or, alternatively, weighting the NGR with a higher averaging factor than the proposed 0.5 factor. Another commenter offered a revised formula that would weight the netting portion of the formula by two and divide the entire formula by three. This commenter stated the revised formula would effectively reduce the credit equivalent amount and place greater emphasis on the portion of the formula affected by a netting arrangement. One commenter suggested that net credit risk should be the basis for the add-on amount.

Several commenters addressed the proposal's specific request for comment on whether the NGR should be calculated on a counterparty-by-counterparty basis or on an aggregate basis across all portfolios eligible for capital netting treatment. A few commenters supported a counterparty-by-counterparty NGR as providing a more accurate indication of credit risks. Other commenters preferred an aggregate NGR, characterizing an aggregate NGR as less burdensome to calculate. Two commenters suggested applying a single NGR to all counterparties within each risk weight classification.

Other Comments

Several commenters encouraged recognizing other risk reducing techniques such as margin and collateral agreements, frequent settlement of mark-to-market values, and periodic resetting of terms and early termination agreements. One commenter suggested there should be no capital charge for potential future exposure when current exposure is less than a certain level (e.g., negative $1 million). One commenter suggested using negative net mark-to-market values to offset potential future exposure. A few commenters supported the use of internal systems to calculate capital requirements and recommended continued monitoring of developments in the banking industry.

IV. Final Rule

After consideration of the comments received and further deliberation on the issues involved, the banking agencies have determined to adopt a final rule that is substantially the same as proposed. The final rule amends the matrix of conversion factors used to calculate potential future exposure and permits institutions to recognize the effects of qualifying bilateral netting arrangements in the calculation of potential future exposure. The final rule is consistent with a revision to the Basle Accord announced by the Basle Supervisors Committee in April 1995.[9]

Expanded Matrix

The banking agencies believe that the proposed conversion factors generally provide a reasonable measure of potential future exposure for long-dated interest rate and exchange rate contracts and for other derivative instruments not addressed in the original Accord. In addition, the banking agencies believe that the proposed matrix adequately accommodates a variety of contracts and appropriately provides a reasonable balance between precision, and complexity and burden. The agencies, however, have taken into consideration issues raised by commenters regarding the simulation methods used to arrive at the conversion factors for other commodities. After additional simulation analysis, the agencies have concluded that the conversion factor for other commodity transactions with maturities of one year or less should be lowered from 12 percent to 10 percent. Any off-balance-sheet derivative contract not explicitly covered by the expanded matrix is subject to the add-on conversion factors for other

[9] The revision to the Basle Accord is in an annex with the heading ''Forwards, swaps, purchased options and similar derivative contracts'' that was issued along with the Basle Supervisors Committee's consultative proposal on Market Risk on April 12, 1995. This document is available upon request from the Board's and OCC's Freedom of Information Offices and the FDIC's Office of the Executive Secretary.

commodities. Furthermore, in response to commenters' concerns, the banking agencies have revised the proposed time band of ''less than one year'' to ''one year or less'' to maintain consistency with the existing time bands for remaining maturity.

The proposed matrix included a footnote applicable to equity contracts that automatically reset market value to zero following a payment. Under the proposal, the remaining maturity of such contracts would be the time until the next payment. Several commenters asserted this treatment should extend to a wider range of contacts. The agencies have determined that for contracts structured to settle outstanding exposure to zero following specified payment dates and where the terms of the contract are reset so that the market value of the contract is zero on these dates, the remaining maturity may be set equal to the time until the next reset date. However, the agencies believe that a long-dated interest rate swap, with, for example, a six-month zero reset provision, represents a greater risk than an interest rate swap that terminates after six months. The final rule provides that the minimum add-on conversion factor for interest rate contacts with remaining maturities of greater than one year is 0.5 percent.

Under the final rule, which is identical to the proposal in this regard, gold derivative contracts are accorded the same conversion factors as exchange rate contracts. However, while exchange rate contracts with original maturities of fourteen calendar days or less may be excluded from the risk-based ratio calculation,[10] gold contracts with such original maturities are to be included.

Finally, the agencies note that the conversion factors are to be regarded as provisional and may be subject to amendment as a result of changes in the volatility of rates and prices.

Netting and Potential Future Exposure

The final rule adopts, in substantially the same form, the proposed methodology for reducing potential future exposure for contracts subject to qualifying bilateral netting arrangements. The agencies have considered the argument presented by several commenters that the proposed formula did not give sufficient recognition to reductions in credit risk resulting from participating in qualifying netting arrangements. These commenters suggested giving full weight to the NGR or, alternatively, that it be weighted at 90 percent. The agencies believe that only partial weight should be given to the NGR as it is neither a precise, nor a stable indicator of future changes in net exposure relative to changes in gross exposure. The agencies agree, to a limited extent, with commenters that a 0.5 averaging factor (referred to as the policy or P factor) may not sufficiently recognize reductions in potential future exposure resulting from qualifying bilateral netting arrangements and have determined that the P factor should be raised to 0.6. This weight represents an appropriate compromise between recognizing effects of bilateral netting arrangements in calculating the add-on and providing a cushion against additional exposure that may arise as a result of fluctuations in prices or rates. The formula adopted by the agencies is expressed as:

$$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$$

The agencies have also considered comments discussing whether the NGR should be calculated on a counterparty-by-counterparty basis (that is, an individual NGR for each bilateral netting contract) or on an aggregate basis for all contracts subject to legally enforceable netting arrangements. The agencies have determined that an institution may elect to calculate separate NGRs for each of its bilateral netting arrangements or an aggregate NGR so long as the method chosen is used consistently and is subject to examiner review.

Regardless of the method employed by an institution to calculate its NGR(s), the NGR should be applied separately and individually to each of the institution's bilateral netting arrangements. If an institution calculates an NGR for each bilateral netting arrangement, then it should use a different NGR when determining the potential future exposure for each bilateral netting arrangement. If an institution aggregates its net and gross replacement costs across all bilateral netting contracts to determine a single NGR, then it should use the same NGR when determining the potential future exposure for each bilateral netting arrangement.

Institutions with equity, precious metal, and other commodity contracts included in bilateral netting contracts should now include those types of transactions when determining the net current exposure for the bilateral netting contract and when determining potential future exposure in accordance with this final rule.

The final rule permits, subject to certain conditions, institutions to take into account qualifying collateral when assigning the credit equivalent amount of a netting arrangement to the appropriate risk category in accordance with the procedures and requirements currently set forth in each agency's risk-based capital standards.

Finally, the agencies note that the methodology for recognizing the effects of qualifying bilateral netting arrangements is subject to review and revision as determined to be appropriate.

V. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies do not believe that this final rule will have a significant impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In this regard, while some institutions with limited derivative portfolios may experience an increase in capital charges, for most of these institutions the final rule will have no effect. For institutions with more developed derivative portfolios, the overall effect of the rule will likely be to reduce regulatory burden and decrease the capital charge for certain derivative transactions. In addition, because the risk-based capital standards generally do not apply to bank holding companies with consolidated assets of less than $150 million, this final rule will not affect such companies.

VI. Paperwork Reduction Act and Regulatory Burden

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

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulation that imposes additional requirements on insured depository institutions. As noted above, the rule may result in higher capital charges for some institutions and lower charges for others, but any additional paperwork or recordkeeping burden should be minimal. The rule provides a more accurate measure of risks related to derivative contracts and the capital required to cover those risks.

[10] Exchange rate contracts with original maturities of 14 calendar days or less are normally excluded from the risk-based capital ratio. When such contracts are included in a bilateral netting arrangement, however, the institution may elect consistently either to include or exclude all mark-to-market values of those contracts when determining net current exposure. These contracts should continue to be excluded when determining potential future exposure.

Section 302 also requires such a rule to become effective on the first day of the calendar quarter following publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate. Accordingly, the agencies have determined that an effective date of October 1, 1995 is appropriate.

VII. OCC Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866.

VIII. OCC 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 certain agencies 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 the agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this joint agency 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. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

As discussed in the preamble, this joint agency final rule amends the risk-based capital guidelines to (1) revise and expand the credit conversion factors used to calculate the potential future credit exposure for derivative contracts and long-dated interest rate and foreign exchange rate contracts and (2) permit banks to net multiple derivative contracts subject to a qualifying bilateral netting contract when calculating the potential future credit exposure. While the impact of this final rule on any particular national bank will depend on the composition of its derivatives portfolio, the OCC believes that this final rule generally will have little or no impact on most banks since most banks have limited derivative portfolios. For those banks with more developed derivatives portfolios, the OCC believes that the effect of this final rule will likely be a decrease in the capital requirements for certain derivative contracts.

List of Subjects

12 CFR Part 3

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

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

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

Authority and Issuance

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

For the reasons set out in the joint preamble, appendix A to part 3 of title 12, chapter 1 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. In appendix A, to part 3, section 1 is revised by redesignating paragraphs (c)(10) through (c)(30) as paragraphs (c)(11) through (c)(31) and adding new paragraph (c)(10) to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

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

* * * * *

(c) * * *

(10) *Derivative contract* means generally a financial contract whose value is derived from the values of one or more underlying assets, reference rates or indexes of asset values. Derivative contracts include interest rate, foreign exchange rate, equity, precious metals and commodity contracts, or any other instrument that poses similar credit risks.

* * * * *

3. In appendix A, to part 3, section 3 is amended:

a. By revising paragraph (a)(1)(viii);

b. In paragraph (a)(3)(ii) by removing the words ''interest rate and exchange rate contracts,'' and adding in their place the words ''derivative contracts,''; and

c. In paragraph (b) by revising the introductory text and paragraph (b)(5).

The revisions read as follows:

* * * * *

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

* * * * *

(a) * * *

(1) * * *

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

* * * * *

(b) *Off-Balance Sheet Activities.* The risk weight assigned to an off-balance sheet item is determined by a two-step process. First, the face amount of the off-balance sheet item is multiplied by the appropriate credit conversion factor specified in this section. This calculation translates the face amount of an off-balance sheet item into an on-balance sheet credit equivalent amount. Second, the resulting credit equivalent amount is then assigned to the proper risk category using the criteria regarding obligors, guarantors, and collateral listed in section 3(a) of this appendix A. Collateral and guarantees are applied to the face amount of an off-balance sheet item; however, with respect to derivative contracts under section 3(b)(5) of this appendix A, collateral and guarantees are applied to the credit equivalent amounts of such derivative contracts. The following are the credit conversion factors and the off-balance sheet items to which they apply.

* * * * *

(5) *Derivative contracts.* (i) *Calculation of credit equivalent amounts.* The credit equivalent amount of a derivative contract equals the sum of the current credit exposure and the potential future credit exposure of the derivative contract. The calculation of credit equivalent amounts must be measured in U.S. dollars, regardless of the currency or currencies specified in the derivative contract.

[9a] See footnote 22 in section 3(b)(5)(iii) of this appendix A (collateral held against derivative contracts).

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

(A) *Current credit exposure.* The current credit exposure for a single derivative contract is determined by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market is zero or negative, then the current credit exposure is zero. The current credit exposure for multiple derivative contracts executed with a single counterparty and subject to a qualifying bilateral netting contract is determined as provided by section 3(b)(5)(ii)(A) of this appendix A.

(B) *Potential future credit exposure.* The potential future credit exposure for a single derivative contract, including a derivative contract with negative mark-to-market value, is calculated by multiplying the notional principal [19] of the derivative contract by one of the credit conversion factors in Table A—Conversion Factor Matrix of this appendix A, for the appropriate category.[20] The potential future credit exposure for gold contracts shall be calculated using the foreign exchange rate conversion factors. For any derivative contract that does not fall within one of the specified categories in Table A—Conversion Factor Matrix of this appendix A, the potential future credit exposure shall be calculated using the other commodity conversion factors. Subject to examiner review, banks should use the effective rather than the apparent or stated notional amount in calculating the potential future credit exposure. The potential future credit exposure for multiple derivatives contracts executed with a single counterparty and subject to a qualifying bilateral netting contract is determined as provided by section 3(b)(5)(ii)(A) of this appendix A.

TABLE A—CONVERSION FACTOR MATRIX[1]

Remaining maturity [2]	Interest rate	Foreign exchange rate and gold	Equity[2]	Precious metals	Other commodity
One year or less	0.0	1.0	6.0	7.0	10.0
Over one to five years	0.5	5.0	8.0	7.0	12.0
Over five years	1.5	7.5	10.0	8.0	15.0

[1] For derivative contracts with multiple exchanges of principal, the conversion factors are multiplied by the number of remaining payments in the derivative contract.

[2] For derivative contracts that automatically reset to zero value following a payment, the remaining maturity equals the time until the next payment. However, interest rate contracts with remaining maturities of greater than one year shall be subject to a minimum conversion factor of 0.5 percent.

(ii) *Derivative contracts subject to a qualifying bilateral netting contract.* (A) *Netting calculation.* The credit equivalent amount for multiple derivative contracts executed with a single counterparty and subject to a qualifying bilateral netting contract as provided by section (3)(b)(5)(ii)(B) of this appendix A is calculated by adding the net current credit exposure and the adjusted sum of the potential future credit exposure for all derivative contracts subject to the qualifying bilateral netting contract.

(*1*) *Net current credit exposure.* The net current credit exposure is the net sum of all positive and negative mark-to-market values of the individual derivative contracts subject to a qualifying bilateral netting contract. If the net sum of the mark-to-market value is positive, then the net current credit exposure equals that net sum of the mark-to-market value. If the net sum of the mark-to-market value is zero or negative, then the net current credit exposure is zero.

(*2*) *Adjusted sum of the potential future credit exposure.* The adjusted sum of the potential future credit exposure is calculated as:

$$A_{net}=0.4\times A_{gross}+(0.6\times NGR\times A_{gross})$$

A_{net} is the adjusted sum of the potential future credit exposure, A_{gross} is the gross potential future credit exposure, and NGR is the net to gross ratio. A_{gross} is the sum of the potential future credit exposure (as determined under section 3(b)(5)(i)(B) of this appendix A) for each individual derivative contract subject to the qualifying bilateral netting contract. The NGR is the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under section 3(b)(5)(i)(A) of this appendix A) of all individual derivative contracts subject to the qualifying bilateral netting contract.

(B) *Qualifying bilateral netting contract.* In determining the current credit exposure for multiple derivative contracts executed with a single counterparty, a bank may net derivative contracts subject to a qualifying bilateral netting contract by offsetting positive and negative mark-to-market values, provided that:

(*1*) The qualifying bilateral netting contract is in writing.

(*2*) The qualifying bilateral netting contract is not subject to a walkaway clause.

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

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

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

(*ii*) The law of the jurisdiction that governs the individual derivative contracts covered by the bilateral netting contract; and

(*iii*) The law of the jurisdiction that governs the qualifying bilateral netting contract.

(*5*) The bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the qualifying bilateral netting contract continues to satisfy the requirement of this section.

(*6*) The bank maintains in its files documentation adequate to support the netting of a derivative contract.[21]

[19] For purposes of calculating either the potential future credit exposure under section 3(b)(5)(i)(B) of this appendix A or the gross potential future credit exposure under section 3(b)(5)(ii)(A)(2) of this appendix A for foreign exchange contracts and other similar contracts in which the notional principal is equivalent to the cash flows, total notional principal is the net receipts to each party falling due on each value date in each currency.

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

[21] By netting individual derivative contracts for the purpose of calculating its credit equivalent amount, a bank represents that documentation adequate to support the netting of a set of derivative contract is in the bank's files and available for inspection by the OCC. Upon determination by the OCC that a bank's files are inadequate or that a qualifying bilateral netting contract may not be legally enforceable in any one of the bodies of law described in section 3(b)(5)(ii)(B)(*3*)(*i*) through (*iii*) of this appendix A, the underlying derivative contracts may not be netted for the purposes of this section.

(iii) *Risk weighting.* Once the bank determines the credit equivalent amount for a derivative contract or a set of derivative contracts subject to a qualifying bilateral netting contract, the bank assigns that amount to the risk weight category appropriate to the counterparty, or, if relevant, the nature of any collateral or guarantee.[22] However, the maximum weight that will be applied to the credit equivalent amount of such derivative contract(s) is 50 percent.

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

(A) An exchange rate contract with an original maturity of 14 calendar days or less;[23] and

(B) A derivative contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

* * * * *

4. Table 3, at the end of appendix A, is revised to read as follows:

* * * * *

Table 3—Treatment of Derivative Contracts

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

CONVERSION FACTOR MATRIX [1]

[Percent]

Remaining maturity [2]	Interest rate	Foreign exchange rate and gold	Equity [2]	Precious metals	Other commodity
One year or less	0.0	1.0	6.0	7.0	10.0
Over one to five years	0.5	5.0	8.0	7.0	12.0
Over five years	1.5	7.5	10.0	8.0	15.0

[1] For derivative contracts with multiple exchanges of principal, the conversion factors are multiplied by the number of remaining payments in the derivative contract.

[2] For derivative contracts that automatically reset to zero value following a payment, the remaining maturity equals the time until the next payment. However, interest rate contracts with remaining maturities of greater than one year shall be subject to a minimum conversion factor of 0.5 percent.

2. The following derivative contracts will be excluded:

a. Exchange rate contract with an original maturity of 14 calendar days or less; and

b. Derivative contract traded on exchanges and subject to daily margin requirements.

Dated: August 24, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

For the reasons set out in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR parts 208 and 225 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 continues 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, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b.

2. In part 208, appendix A is amended by revising the last paragraph of section III.C.3. and footnote 40 in the introductory text of section III.D. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

C. * * *

3. * * *

Credit equivalent amounts of derivative contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

* * * * *

D. * * * [40] * * *

* * * * *

3. In part 208, appendix A is amended by revising the section III.E. heading and section III.E. to read as follows:

* * * * *

III. * * *

E. Derivative Contracts (Interest Rate, Exchange Rate, Commodity— (including precious metals) and Equity-Linked Contracts)

1. *Scope.* Credit equivalent amounts are computed for each of the following off-balance-sheet derivative contracts:

a. Interest Rate Contracts. These include single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars, and floors purchased), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward forward deposits accepted).

b. Exchange Rate Contracts. These include cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased, and any other instrument linked to exchange rates that gives rise to similar credit risks.

c. Equity Derivative Contracts. These include equity-linked swaps, equity-linked options purchased, forward equity-linked contracts, and any other instrument linked to equities that gives rise to similar credit risks.

d. Commodity (including precious metal) Derivative Contracts. These include commodity-linked swaps, commodity-linked options purchased, forward commodity-linked contracts, and any other instrument

[22] Derivative contracts are an exception to the general rule of applying collateral and guarantees to the face value of off-balance sheet items. The sufficiency of collateral and guarantees is determined on the basis of the credit equivalent amount of derivative contracts. However, collateral and guarantees held against a qualifying bilateral netting contract is not recognized for capital purposes unless it is legally available for all contracts included in the qualifying bilateral netting contract.

[23] Notwithstanding section 3(b)(5)(B) of this appendix A, gold contracts do not qualify for this exception.

[40] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

linked to commodities that gives rise to similar credit risks.

e. Exceptions. Exchange rate contracts with an original maturity of fourteen or fewer calendar days and derivative contracts traded on exchanges that require daily receipt and payment of cash variation margin may be excluded from the risk-based ratio calculation. Gold contracts are accorded the same treatment as exchange rate contracts except that gold contracts with an original maturity of fourteen or fewer calendar days are included in the risk-based ratio calculation. Over-the-counter options purchased are included and treated in the same way as other derivative contracts.

2. *Calculation of credit equivalent amounts.* a. The credit equivalent amount of a derivative contract that is not subject to a qualifying bilateral netting contract in accordance with section III.E.3. of this appendix A is equal to the sum of (i) the current exposure (sometimes referred to as the replacement cost) of the contract; and (ii) an estimate of the potential future credit exposure of the contract.

b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in underlying rates, prices, and indices, as well as counterparty credit quality.

c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. Banks should use, subject to examiner review, the effective rather than the apparent or stated notional amount in this calculation. The credit conversion factors are:

CONVERSION FACTORS

[In percent]

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Commodity, excluding precious metals	Precious metals, except gold
One year or less	0.0	1.0	6.0	10.0	7.0
Over one to five years	0.5	5.0	8.0	12.0	7.0
Over five years	1.5	7.5	10.0	15.0	8.0

d. For a contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity is equal to the time until the next reset date. For an interest rate contract with a remaining maturity of more than one year that meets these criteria, the minimum conversion factor is 0.5 percent.

e. For a contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the contract. A derivative contract not included in the definitions of interest rate, exchange rate, equity, or commodity contracts as set forth in section III.E.1. of this appendix A, is subject to the same conversion factors as a commodity, excluding precious metals.

f. No potential future exposure is calculated for a single currency interest rate swap in which payments are made based upon two floating rate indices (a so called floating/floating or basis swap); the credit exposure on such a contract is evaluated solely on the basis of the mark-to-market value.

g. The Board notes that the conversion factors set forth above, which are based on observed volatilities of the particular types of instruments, are subject to review and modification in light of changing volatilities or market conditions.

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

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

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

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

2. The law that governs the individual contracts covered by the netting contract; and

3. The law that governs the netting contract.

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

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

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[49]

c. A bank netting individual contracts for the purpose of calculating credit equivalent amounts of derivative contracts, represents that it has met the requirements of this appendix A and all the appropriate documents are in the bank's files and available for inspection by the Federal Reserve. The Federal Reserve may determine that a bank's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in section III.E.3.a.ii. of this appendix A. If such a determination is made, the netting contract may be disqualified from recognition for risk-based capital purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

d. The credit equivalent amount of contracts that are subject to a qualifying bilateral netting contract is calculated by adding (i) the current exposure of the netting contract (net current exposure) and (ii) the sum of the estimates of potential future credit exposures on all individual contracts subject to the netting contract (gross potential future exposure) adjusted to reflect the effects of the netting contract.[50]

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

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

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

exposure is zero. The Federal Reserve may determine that a netting contract qualifies for risk-based capital netting treatment even though certain individual contracts included under the netting contract may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

f. Gross potential future exposure, or A_{gross} is calculated by summing the estimates of potential future exposure (determined in accordance with section III.E.2 of this appendix A) for each individual contract subject to the qualifying bilateral netting contract.

g. The effects of the bilateral netting contract on the gross potential future exposure are recognized through the application of a formula that results in an adjusted add-on amount (A_{net}). The formula, which employs the ratio of net current exposure to gross current exposure (NGR) is expressed as:

$$A_{net} = (0.4 \times A_{gross}) + 0.6(NGR \times A_{gross})$$

h. The NGR may be calculated in accordance with either the counterparty-by-counterparty approach or the aggregate approach.

i. Under the counterparty-by-counterparty approach, the NGR is the ratio of the net current exposure for a netting contract to the gross current exposure of the netting contract. The gross current exposure is the sum of the current exposures of all individual contracts subject to the netting contract calculated in accordance with section III.E.2. of this appendix A. Net negative mark-to-market values for individual netting contracts with the same counterparty may not be used to offset net positive mark-to-market values for other netting contracts with that counterparty.

ii. Under the aggregate approach, the NGR is the ratio of the sum of all of the net current exposures for qualifying bilateral netting contracts to the sum of all of the gross current exposures for those netting contracts (each gross current exposure is calculated in the same manner as in section III.E.3.h.i. of this appendix A). Net negative mark-to-market values for individual counterparties may not be used to offset net positive mark-to-market values for other counterparties.

iii. A bank must consistently use either the counterparty-by-counterparty approach or the aggregate approach to calculate the NGR. Regardless of the approach used, the NGR should be applied individually to each qualifying bilateral netting contract to determine the adjusted add-on for that netting contract.

i. In the event a netting contract covers contracts that are normally excluded from the risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen or fewer calendar days or instruments traded on exchanges that require daily payment and receipt of cash variation margin—a bank may elect to either include or exclude all mark-to-market values of such contracts when determining net current exposure, provided the method chosen is applied consistently.

4. *Risk Weights.* Once the credit equivalent amount for a derivative contract, or a group of derivative contracts subject to a qualifying bilateral netting contract, has been determined, that amount is assigned to the risk category appropriate to the counterparty, or, if relevant, the guarantor or the nature of any collateral.[51] However, the maximum risk weight applicable to the credit equivalent amount of such contracts is 50 percent.

5. *Avoidance of double counting.* a. In certain cases, credit exposures arising from the derivative contracts covered by section III.E. of this appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the derivative instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating a bank's risk-based capital ratios.

b. Examples of the calculation of credit equivalent amounts for contracts covered under this section III.E. are contained in Attachment V of this appendix A.

* * * * *

4. In appendix A to part 208, Attachments IV and V are revised to read as follows:

* * * * *

Attachment IV—Credit Conversion Factors for Off-Balance-Sheet Items for State Member Banks

100 Percent Conversion Factor

1. Direct credit substitutes. (These include general guarantees of indebtedness and all guarantee-type instruments, including standby letters of credit backing the financial obligations of other parties.)

2. Risk participations in bankers acceptances and direct credit substitutes, such as standby letters of credit.

3. Sale and repurchase agreements and assets sold with recourse that are not included on the balance sheet.

4. Forward agreements to purchase assets, including financing facilities, on which drawdown is certain.

5. Securities lent for which the bank is at risk.

50 Percent Conversion Factor

1. Transaction-related contingencies. (These include bid-bonds, performance bonds, warranties, and standby letters of credit backing the nonfinancial performance of other parties.)

2. Unused portions of commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines.

3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and similar arrangements.

20 Percent Conversion Factor

Short-term, self-liquidating trade-related contingencies, including commercial letters of credit.

Zero Percent Conversion Factor

Unused portions of commitments with an original maturity of one year or less, or which are unconditionally cancellable at any time, provided a separate credit decision is made before each drawing.

Credit Conversion for Derivative Contracts

1. The credit equivalent amount of a derivative contract is the sum of the current credit exposure of the contract and an estimate of potential future increases in credit exposure. The current exposure is the positive mark-to-market value of the contract (or zero if the mark-to-market value is zero or negative). For derivative contracts that are subject to a qualifying bilateral netting contract, the current exposure is, generally, the net sum of the positive and negative mark-to-market values of the contracts included in the netting contract (or zero if the net sum of the mark-to-market values is zero or negative). The potential future exposure is calculated by multiplying the effective notional amount of a contract by one of the following credit conversion factors, as appropriate:

CONVERSION FACTORS

[In percent]

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Commodity, excluding precious metals	Precious metals, except gold
One year or less	0.0	1.0	6.0	10.0	7.0
Over one to five years	0.5	5.0	8.0	12.0	7.0
Over five years	1.5	7.5	10.0	15.0	8.0

[51] For derivative contracts, sufficiency of collateral or guarantees is generally determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

For contracts subject to a qualifying bilateral netting contract, the potential future exposure is, generally, the sum of the individual potential future exposures for each contract included under the netting contract adjusted by the application of the following formula:

$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$

NGR is the ratio of net current exposure to gross current exposure.

2. No potential future exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating indices, that is, so called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of fourteen days or fewer are excluded. Instruments traded on exchanges that require daily receipt and payment of cash variation margin are also excluded.

ATTACHMENT V—CALCULATING CREDIT EQUIVALENT AMOUNTS FOR DERIVATIVE CONTRACTS

Type of contract	Notional principal amount	Conversion factor	Potential exposure (dollars)	Mark-to-market	Current exposure (dollars)	Credit equivalent amount
(1) 120-day forward foreign exchange	5,000,000	0.01	50,000	100,000	100,000	150,000
(2) 4-year forward foreign exchange	6,000,000	0.05	300,000	−120,000	0	300,000
(3) 3-year single-currency fixed & floating interest rate swap	10,000,000	0.005	50,000	200,000	200,000	250,000
(4) 6-month oil swap	10,000,000	0.10	1,000,000	−250,000	0	1,000,000
(5) 7-year cross-currency floating & floating interest rate swap	20,000,000	0.075	1,500,000	−1,500,000	0	1,500,000
Total			2,900,000	+	300,000	3,200,000

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

Contract	Potential future exposure	Net current exposure	Credit equivalent amount
(1)	50,000		
(2)	300,000		
(3)	50,000		
(4)	1,000,000		
(5)	1,500,000		
Total	2,900,000	+0	2,900,000

NOTE: The total of the mark-to-market values from the first table is −$1,370,000. Since this is a negative amount, the net current exposure is zero.

b. To recognize the effects of bilateral netting on potential future exposure the following formula applies:

$A_{net}=(.4\times A_{gross})+.6(NGR\times A_{gross})$

c. In the above example where the net current exposure is zero, the credit equivalent amount would be calculated as follows:

NGR=0=(0/300,000)
A_{net}=(0.4×$2,900,000)+0.6 (0×$2,900,000)
A_{net}=$1,160,000

The credit equivalent amount is $1,160,000+0=$1,160,000.

d. If the net current exposure was a positive number, for example $200,000, the credit equivalent amount would be calculated as follows:

NGR=.67=($200,000/$300,000)
A_{net}=(0.4×$2,900,000)+0.6(.67×$2,900,000)
A_{net}=$2,325,800.

The credit equivalent amount would be $2,325,800+$200,000=$2,525,800.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In part 225, appendix A is amended by revising the last paragraph of section III.C.3. and footnote 43 in the introductory text of section III.D. to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

C. * * *

3. * * *

Credit equivalent amounts of derivative contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

* * * * *

D. * * *[43] * * *

* * * * *

3. In part 225, appendix A is amended by revising the section III.E. heading and section III.*E.* to read as follows:

* * * * *

III. * * *

E. Derivative Contracts (Interest Rate, Exchange Rate, Commodity- (including

[43] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

precious metals) and Equity-Linked Contracts)

1. *Scope.* Credit equivalent amounts are computed for each of the following off-balance-sheet derivative contracts:

a. Interest Rate Contracts. These include single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars, and floors purchased), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward forward deposits accepted).

b. Exchange Rate Contracts. These include cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased, and any other instrument linked to exchange rates that gives rise to similar credit risks.

c. Equity Derivative Contracts. These include equity-linked swaps, equity-linked options purchased, forward equity-linked contracts, and any other instrument linked to equities that gives rise to similar credit risks.

d. Commodity (including precious metal) Derivative Contracts. These include commodity-linked swaps, commodity-linked options purchased, forward commodity-linked contracts, and any other instrument linked to commodities that gives rise to similar credit risks.

e. Exceptions. Exchange rate contracts with an original maturity of fourteen or fewer calendar days and derivative contracts traded on exchanges that require daily receipt and payment of cash variation margin may be excluded from the risk-based ratio calculation. Gold contracts are accorded the same treatment as exchange rate contracts except that gold contracts with an original maturity of fourteen or fewer calendar days are included in the risk-based ratio calculation. Over-the-counter options purchased are included and treated in the same way as other derivative contracts.

2. *Calculation of credit equivalent amounts.* a. The credit equivalent amount of a derivative contract that is not subject to a qualifying bilateral netting contract in accordance with section III.E.3. of this appendix A is equal to the sum of (i) the current exposure (sometimes referred to as the replacement cost) of the contract; and (ii) an estimate of the potential future credit exposure of the contract.

b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract and should reflect changes in underlying rates, prices, and indices, as well as counterparty credit quality.

c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. Banking organizations should use, subject to examiner review, the effective rather than the apparent or stated notional amount in this calculation. The credit conversion factors are:

Conversion Factors

[In percent]

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Commodity, excluding precious metals	Precious metals, except gold
One year or less	0.0	1.0	6.0	10.0	7.0
Over one to five years	0.5	5.0	8.0	12.0	7.0
Over five years	1.5	7.5	10.0	15.0	8.0

d. For a contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity is equal to the time until the next reset date. For an interest rate contract with a remaining maturity of more than one year that meets these criteria, the minimum conversion factor is 0.5 percent.

e. For a contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the contract. A derivative contract not included in the definitions of interest rate, exchange rate, equity, or commodity contracts as set forth in section III.*E.*1. of this appendix A is subject to the same conversion factors as a commodity, excluding precious metals.

f. No potential future exposure is calculated for a single currency interest rate swap in which payments are made based upon two floating rate indices (a so called floating/floating or basis swap); the credit exposure on such a contract is evaluated solely on the basis of the mark-to-market value.

g. The Board notes that the conversion factors set forth above, which are based on observed volatilities of the particular types of instruments, are subject to review and modification in light of changing volatilities or market conditions.

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

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

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

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

2. The law that governs the individual contracts covered by the netting contract; and

3. The law that governs the netting contract.

iii. The banking organization establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law.

iv. The banking organization maintains in its files documentation adequate to support the netting of derivative contracts, including a copy of the bilateral netting contract and necessary legal opinions.

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[53]

c. A banking organization netting individual contracts for the purpose of calculating credit equivalent amounts of derivative contracts represents that it has met the requirements of this appendix A and all the appropriate documents are in the banking organization's files and available for inspection by the Federal Reserve. The Federal Reserve may determine that a

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

banking organization's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in section III.*E*.3.a.ii. of this appendix A. If such a determination is made, the netting contract may be disqualified from recognition for risk-based capital purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

d. The credit equivalent amount of contracts that are subject to a qualifying bilateral netting contract is calculated by adding (i) the current exposure of the netting contract (net current exposure) and (ii) the sum of the estimates of potential future credit exposures on all individual contracts subject to the netting contract (gross potential future exposure) adjusted to reflect the effects of the netting contract.[54]

e. The net current exposure is the sum of all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the net current exposure is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the net current exposure is zero. The Federal Reserve may determine that a netting contract qualifies for risk-based capital netting treatment even though certain individual contracts included under the netting contract may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

f. Gross potential future exposure, or A_{gross} is calculated by summing the estimates of potential future exposure (determined in accordance with section III.*E*.2 of this appendix A) for each individual contract subject to the qualifying bilateral netting contract.

g. The effects of the bilateral netting contract on the gross potential future exposure are recognized through the application of a formula that results in an adjusted add-on amount (A_{net}). The formula, which employs the ratio of net current exposure to gross current exposure (NGR), is expressed as:

$$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$$

h. The NGR may be calculated in accordance with either the counterparty-by-counterparty approach or the aggregate approach.

i. Under the counterparty-by-counterparty approach, the NGR is the ratio of the net current exposure for a netting contract to the gross current exposure of the netting contract. The gross current exposure is the sum of the current exposures of all individual contracts subject to the netting contract calculated in accordance with section III.*E*.2. of this appendix A. Net negative mark-to-market values for individual netting contracts with the same counterparty may not be used to offset net positive mark-to-market values for other netting contracts with the same counterparty.

ii. Under the aggregate approach, the NGR is the ratio of the sum of all of the net current exposures for qualifying bilateral netting contracts to the sum of all of the gross current exposures for those netting contracts (each gross current exposure is calculated in the same manner as in section III.*E*.3.h.i. of this appendix A). Net negative mark-to-market values for individual counterparties may not be used to offset net positive current exposures for other counterparties.

iii. A banking organization must use consistently either the counterparty-by-counterparty approach or the aggregate approach to calculate the NGR. Regardless of the approach used, the NGR should be applied individually to each qualifying bilateral netting contract to determine the adjusted add-on for that netting contract.

i. In the event a netting contract covers contracts that are normally excluded from the risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen or fewer calendar days or instruments traded on exchanges that require daily payment and receipt of cash variation margin—an institution may elect to either include or exclude all mark-to-market values of such contracts when determining net current exposure, provided the method chosen is applied consistently.

4. *Risk Weights.* Once the credit equivalent amount for a derivative contract, or a group of derivative contracts subject to a qualifying bilateral netting contract, has been determined, that amount is assigned to the risk category appropriate to the counterparty, or, if relevant, the guarantor or the nature of any collateral.[55] However, the maximum risk weight applicable to the credit equivalent amount of such contracts is 50 percent.

5. *Avoidance of double counting.* a. In certain cases, credit exposures arising from the derivative contracts covered by section III.*E.* of this appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the derivative instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating a banking organization's risk-based capital ratios.

b. Examples of the calculation of credit equivalent amounts for contracts covered under this section III.*E.* are contained in Attachment V of this appendix A.

* * * * *

4. In appendix A to part 225, Attachments IV and V are revised to read as follows:

* * * * *

Attachment IV—Credit Conversion Factors for Off-Balance-Sheet Items for Bank Holding Companies

100 Percent Conversion Factor

1. Direct credit substitutes. (These include general guarantees of indebtedness and all guarantee-type instruments, including standby letters of credit backing the financial obligations of other parties.)

2. Risk participations in bankers acceptances and direct credit substitutes, such as standby letters of credit.

3. Sale and repurchase agreements and assets sold with recourse that are not included on the balance sheet.

4. Forward agreements to purchase assets, including financing facilities, on which drawdown is certain.

5. Securities lent for which the banking organization is at risk.

50 Percent Conversion Factor

1. Transaction-related contingencies. (These include bid-bonds, performance bonds, warranties, and standby letters of credit backing the nonfinancial performance of other parties.)

2. Unused portions of commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines.

3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and similar arrangements.

20 Percent Conversion Factor

Short-term, self-liquidating trade-related contingencies, including commercial letters of credit.

Zero Percent Conversion Factor

Unused portions of commitments with an original maturity of one year or less, or which are unconditionally cancellable at any time, provided a separate credit decision is made before each drawing.

Credit Conversion for Derivative Contracts

1. The credit equivalent amount of a derivative contract is the sum of the current credit exposure of the contract and an estimate of potential future increases in credit exposure. The current exposure is the positive mark-to-market value of the contract (or zero if the mark-to-market value is zero or negative). For derivative contracts that are subject to a qualifying bilateral netting contract, the current exposure is, generally, the net sum of the positive and negative mark-to-market values of the contracts included in the netting contract (or zero if the net sum of the mark-to-market values is zero or negative). The potential future exposure is calculated by multiplying the effective notional amount of a contract by one of the following credit conversion factors, as appropriate:

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

[55] For derivative contracts, sufficiency of collateral or guarantees is generally determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.*B.* of this appendix A.

CONVERSION FACTORS

[In percent]

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Commodity, excluding precious metals	Precious metals, except gold
One year or less	0.0	1.0	6.0	10.0	7.0
Over one to five years	0.5	5.0	8.0	12.0	7.0
Over five years	1.5	7.5	10.0	15.0	8.0

For contracts subject to a qualifying bilateral netting contract, the potential future exposure is, generally, the sum of the individual potential future exposures for each contract included under the netting contract adjusted by the application of the following formula:

$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$

NGR is the ratio of net current exposure to gross current exposure.

2. No potential future exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating indices, that is, so called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of fourteen or fewer days are excluded. Instruments traded on exchanges that require daily receipt and payment of cash variation margin are also excluded.

ATTACHMENT V—CALCULATING CREDIT EQUIVALENT AMOUNTS FOR DERIVATIVE CONTRACTS

Type of Contract	Notional principal amount	Conversion factor	Potential exposure (dollars)	Mark-to-market	Current exposure (dollars)	Credit equivalent amount
(1) 120-day forward foreign exchange	5,000,000	.01	50,000	100,000	100,000	150,000
(2) 4-year forward foreign exchange	6,000,000	.05	300,000	−120,000	0	300,000
(3) 3-year single-currency fixed & floating interest rate swap	10,000,000	.005	50,000	200,000	200,000	250,000
(4) 6-month oil swap	10,000,000	.10	1,000,000	−250,000	0	1,000,000
(5) 7-year cross-currency floating & floating interest rate swap	20,000,000	.075	1,500,000	−1,500,000	0	1,500,000
Total	.....	.....	2,900,000	+	300,000	3,200,000

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

Contract	Potential future exposure	Net current exposure	Credit equivalent amount
(1)	50,000	.....	.....
(2)	300,000	.....	.....
(3)	50,000	.....	.....
(4)	1,000,000	.....	.....
(5)	1,500,000	.....	.....
Total	2,900,000	+0	2,900,000

Note: The total of the mark-to-market values from the first table is −$1,370,000. Since this is a negative amount the net current exposure is zero.

b. To recognize the effects of bilateral netting on potential future exposure the following formula applies:

$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$

c. In the above example, where the net current exposure is zero, the credit equivalent amount would be calculated as follows:

NGR=0=(0/300,000)

$A_{net}=(0.4\times\$2,900,000)+.6(0\times\$2,900,000)$

$A_{net}=\$1,160,000$

The credit equivalent amount is $1,160,000+0=$1,160,000.

d. If the net current exposure was a positive number, for example $200,000, the credit equivalent would be calculated as follows:

NGR=.67=($200,000/$300,000)

$A_{net}=(0.4\times\$2,900,000)+0.6(.67\times\$2,900,000)$

$A_{net}=\$2,325,800$

The credit equivalent amount would be $2,325,800+$200,000=$2,525,800.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR CHAPTER III

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

PART 325—CAPITAL MAINTENANCE

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

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(I), 1828(n), 1828(o), 1831o, 1835, 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, section II is amended by:

a. Revising the last sentence in section II.C. Category 3;

b. Redesignating footnotes 35 through 38 as footnotes 36 through 39;

c. Adding new footnote 35 at the end of the introductory text of section II.*D.*; and

d. Revising section II.E. to read as follows:

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

* * * * *

II. * * *

C. * * *

Category 3 * * * In addition, the credit equivalent amount of derivative contracts that do not qualify for a lower risk weight are assigned to the 50 percent risk category.

* * * * *

D. * * *[35] * * *

* * * * *

E. Derivative Contracts (Interest Rate, Exchange Rate, Commodity (including precious metal) and Equity Derivative Contracts)

1. Credit equivalent amounts are computed for each of the following off-balance-sheet derivative contracts:

(a) Interest Rate Contracts

(i) Single currency interest rate swaps.

(ii) Basis swaps.

(iii) Forward rate agreements.

(iv) Interest rate options purchased (including caps, collars, and floors purchased).

(v) Any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

(b) Exchange Rate Contracts

(i) Cross-currency interest rate swaps.

(ii) Forward foreign exchange contracts.

(iii) Currency options purchased.

(iv) Any other instrument linked to exchange rates that gives rise to similar credit risks.

(c) Commodity (including precious metal) or Equity Derivative Contracts

(i) Commodity- or equity-linked swaps.

(ii) Commodity- or equity-linked options purchased.

(iii) Forward commodity- or equity-linked contracts.

(iv) Any other instrument linked to commodities or equities that gives rise to similar credit risks.

2. Exchange rate contracts with an original maturity of 14 calendar days or less and derivative contracts traded on exchanges that require daily receipt and payment of cash variation margin may be excluded from the risk-based ratio calculation. Gold contracts are accorded the same treatment as exchange rate contracts except gold contracts with an original maturity of 14 calendar days or less are included in the risk-based calculation. Over-the-counter options purchased are included and treated in the same way as other derivative contracts.

3. *Credit Equivalent Amounts for Derivative Contracts.* (a) The credit equivalent amount of a derivative contract that is not subject to a qualifying bilateral netting contract in accordance with section II.*E.*5. of this appendix A is equal to the sum of:

(i) The current exposure (which is equal to the mark-to-market value,[40] if positive, and is sometimes referred to as the replacement cost) of the contract; and

(ii) An estimate of the potential future credit exposure.

(b) The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero.

(c) The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. Banks should, subject to examiner review, use the effective rather than the apparent or stated notional amount in this calculation. The credit conversion factors are:

CONVERSION FACTOR MATRIX

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Precious metals, except gold	Other commodities
One year or less	0.0%	1.0%	6.0%	7.0%	10.0%
More than one year to five years	0.5%	5.0%	8.0%	7.0%	12.0%
More than five years	1.5%	7.5%	10.0%	8.0%	15.0%

(d) For contracts that are structured to settle outstanding exposure on specified dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the remaining maturity is equal to the time until the next reset date. For interest rate contracts with remaining maturities of more than one year and that meet these criteria, the conversion factor is subject to a minimum value of 0.5 percent.

(e) For contracts with multiple exchanges of principal, the conversion factors are to be multiplied by the number of remaining payments in the contract. Derivative contracts not explicitly covered by any of the columns of the conversion factor matrix are to be treated as ''other commodities.''

(f) No potential future exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices (so called floating/floating or basis swaps); the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

4. *Risk Weights and Avoidance of Double Counting.* (a) Once the credit equivalent amount for a derivative contract, or a group of derivative contracts subject to a qualifying bilateral netting agreement, has been determined, that amount is assigned to the risk category appropriate to the counterparty, or, if relevant, the guarantor or the nature of any collateral. However, the maximum weight that will be applied to the credit equivalent amount of such contracts is 50 percent.

(b) In certain cases, credit exposures arising from the derivative contracts covered by these guidelines may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the types of instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating a bank's risk-based capital ratio.

(c) The FDIC notes that the conversion factors set forth in section II.*E.*3. of appendix A, which are based on observed volatilities of the particular types of instruments, are subject to review and modification in light of changing volatilities or market conditions.

(d) Examples of the calculation of credit equivalent amounts for these types of contracts are contained in Table IV of this appendix A.

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

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

[35] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section II.*B.* of this appendix A.

[40] Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract and should reflect changes in both underlying rates, prices and indices, and counterparty credit quality.

perform due to default, bankruptcy, liquidation, or similar circumstances;

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

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

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

(*3*) The law that governs the netting contract.

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

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

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

(c) By netting individual contracts for the purpose of calculating its credit equivalent amount, a bank represents that it has met the requirements of this appendix A and all the appropriate documents are in the bank's files and available for inspection by the FDIC. Upon determination by the FDIC that a bank's files are inadequate or that a netting contract may not be legally enforceable under any one of the bodies of law described in paragraphs (ii)(1) through (3) of section II.E.5.(a) of this appendix A, underlying individual contracts may be treated as though they were not subject to the netting contract.

(d) The credit equivalent amount of derivative contracts that are subject to a qualifying bilateral netting contract is calculated by adding:

(i) The net current exposure of the netting contract; and

(ii) The sum of the estimates of potential future exposure for all individual contracts subject to the netting contract, adjusted to take into account the effects of the netting contract.[42]

(e) The net current exposure is the sum of all positive and negative mark-to-market values of the individual contracts subject to the netting contract. If the net sum of the mark-to-market values is positive, then the net current exposure is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the net current exposure is zero.

(f) The effects of the bilateral netting contract on the gross potential future exposure are recognized through application of a formula, resulting in an adjusted add-on amount (A_{net}). The formula, which employs the ratio of net current exposure to gross current exposure (NGR) is expressed as:

$$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$$

The effect of this formula is that A_{net} is the weighted average of A_{gross}, and A_{gross} adjusted by the NGR.

(g) The NGR may be calculated in either one of two ways—referred to as the counterparty-by-counterparty approach and the aggregate approach.

(i) Under the counterparty-by-counterparty approach, the NGR is the ratio of the net current exposure of the netting contract to the gross current exposure of the netting contract. The gross current exposure is the sum of the current exposures of all individual contracts subject to the netting contract calculated in accordance with section II.E. of this appendix A.

(ii) Under the aggregate approach, the NGR is the ratio of the sum of all of the net current exposures for qualifying bilateral netting contracts to the sum of all of the gross current exposures for those netting contracts (each gross current exposure is calculated in the same manner as in section II.*E*.5.(g)(i) of this appendix A). Net negative mark-to-market values to individual counterparties cannot be used to offset net positive current exposures to other counterparties.

(iii) A bank must use consistently either the counterparty-by-counterparty approach or the aggregate approach to calculate the NGR. Regardless of the approach used, the NGR should be applied individually to each qualifying bilateral netting contract to determine the adjusted add-on for that netting contract.

3. In appendix A to part 325, Table III is amended by:

a. In the last sentence, removing ''II.E.3.'' and adding in its place ''II.*E*.5.''; and

b. Revising the chart and its heading to read as follows:

Table III. * * *

* * * * *

Credit Conversion for Derivative Contracts

* * * * *

CONVERSION FACTOR MATRIX

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Precious metals, except gold	Other commodities
One year or less	0.0%	1.0%	6.0%	7.0%	10.0%
More than one year to five years	0.5%	5.0%	8.0%	7.0%	12.0%
More than five years	1.5%	7.5%	10.0%	8.0%	15.0%

* * * * *

4. Appendix A to part 325, Table IV, is revised to read as follows:

TABLE IV.—CALCULATION OF CREDIT EQUIVALENT AMOUNTS FOR DERIVATIVE CONTRACTS

Potential exposure	+	Current exposure	=	Credit equivalent amount		Credit equivalent amount
Type of contract (remaining maturity)	Notional principal (dollars)	Conversion factor	Potential exposure (dollars)	Mark-to market value	Current exposure (dollars)	
(1) 120-Day Forward Foreign Exchange	5,000,000	.01	50,000	100,000	100,000	150,000
(2) 4-Year Forward Foreign Exchange	6,000,000	.05	300,000	−120,000	0	300,000
(3) 3-Year Single-Currency Fixed/Floating Interest Rate Swap	10,000,000	.005	50,000	200,000	200,000	250,000

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

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

TABLE IV.—CALCULATION OF CREDIT EQUIVALENT AMOUNTS FOR DERIVATIVE CONTRACTS—Continued

Potential exposure	+	Current exposure	=	Credit equivalent amount		Credit equivalent amount
Type of contract (remaining maturity)	Notional principal (dollars)	Conversion factor	Potential exposure (dollars)	Mark-to market value	Current exposure (dollars)	
(4) 6-Month Oil Swap	10,000,000	.10	1,000,000	−250,000	0	1,000,000
(5) 7-Year Cross-Currency Floating/Floating Interest Rate Swap	20,000,000	.075	1,500,000	−1,500,000	0	1,500,000
Total			2,900,000		300,000	3,200,000

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

	Potential future exposure (from above)		Net current exposure*		Credit equivalent amount
(1)	50,000				
(2)	300,000				
(3)	50,000				
(4)	1,000,000				
(5)	1,500,000				
Total	2,900,000	+	0	=	2,900,000

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

(2) To recognize the effects of netting on potential future exposure, the following formula applies:

$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$

(3) In the above example:

NGR=0=(0/300,000)
$A_{net}=(0.4\times 2,900,000)+0.6(0\times 2,900,000)$
$A_{net}=1,160,000$
Credit Equivalent Amount: 1,160,000+0=1,160,000

(4) If the net current exposure was a positive amount, for example, $200,000, the credit equivalent amount would be calculated as follows:

NGR=.67=(200,000/300,000)
$A_{net}=(0.4\times 2,900,000)+0.6(.67\times 2,900,000)$
$A_{net}=2,325,800$
Credit Equivalent Amount: 2,325,800+200,000=2,525,800

By order of the Board of Directors.

Dated at Washington, D.C. this 25th day of August, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–21608 Filed 9–1–95; 8:45 am]

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Tuesday
September 5, 1995

Part V

Department of the Treasury

Customs Service

19 CFR Parts 10, 12, 102 and 178

Rules of Origin for Textile and Apparel Products; Final Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 102 and 178

[T.D. 95–69]

RIN 1515–AB71

Rules of Origin for Textile and Apparel Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth final amendments to the Customs Regulations to implement the provisions of section 334 of the Uruguay Round Agreements Act (''the Act'') regarding the country of origin of textile and apparel products. Except for the purpose of identifying products of Israel, the regulations will govern the determination of the country of origin of imported textile and apparel products for purposes of laws enforced by the Customs Service. The regulations also implement the provisions of section 334 of the Act regarding the treatment of components that are cut to shape in the United States from foreign fabric, exported for assembly, and returned to the United States. This document also sets forth regulations implementing previously-enacted provisions regarding the treatment of articles assembled or produced in a Caribbean Basin Initiative beneficiary country wholly from U.S.-produced components, materials or ingredients.

EFFECTIVE DATE: Final rule effective October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Office of Regulations and Rulings (202–482–7029).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1994, President Clinton signed into law the Uruguay Round Agreements Act (''the Act''), Public Law 103–465, 108 Stat. 4809. Subtitle D of Title III of the Act deals with textiles and includes section 334 (codified at 19 U.S.C. 3592) which concerns rules of origin for textile and apparel products.

Paragraph (a) of section 334 provides that the Secretary of the Treasury shall prescribe rules implementing the principles contained in paragraph (b) for determining the origin of ''textiles and apparel products''.

Paragraph (b) of section 334 incorporates the following provisions: (1) for purposes of the customs laws and the administration of quantitative restrictions and except as otherwise provided for by statute, general rules for determining when a ''textile or apparel product'' originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession; (2) special origin rules for goods classifiable under certain specified tariff headings and subheadings; (3) a ''multicountry rule'' for determining origin when the origin of a good cannot be determined under the preceding provisions of paragraph (b); (4) special rules governing the treatment of components that are cut to shape in the United States from foreign fabric, exported for assembly, and returned to the United States; and (5) an exception to the application of section 334 that specifically provides for the continued application of the administrative practices that were applied immediately before the enactment of the Act to determine the origin of textile and apparel products from Israel, unless such practices are modified by the mutual consent of the United States and Israel.

Paragraph (c) of section 334 provides that section 334 shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. Paragraph (c) further provides that section 334 shall not apply to goods entered or withdrawn from warehouse on or before January 1, 1998, that are covered by contracts of sale which were entered into, with all material terms fixed, before July 20, 1994, and which are filed, with an accompanying certification, with the Commissioner of Customs within 60 days after the date of the enactment of the Act. On January 27, 1995, Customs published in the **Federal Register** (60 FR 5457) a notice setting forth the procedures for filing such contracts and certifications.

On May 23, 1995, Customs published in the **Federal Register** (60 FR 27378) a notice of proposed rulemaking setting forth proposed amendments to the Customs Regulations to implement the rules of origin principles of section 334(b) of the Act. In that document Customs proposed to implement those provisions of section 334(b) of the Act that have broad application under the terms of the statute by amending Part 102 of the Customs Regulations (19 CFR Part 102) and by amending other regulatory provisions as necessary to conform to those Part 102 changes. With regard to the remaining provisions of section 334(b) (that is, the special rules governing the treatment of components that are cut to shape in the United States from foreign fabric, exported for assembly, and returned to the United States), Customs proposed to implement those provisions through amendments to Part 10 of the Customs Regulations (19 CFR Part 10). In addition, Customs proposed to make a number of amendments to existing regulatory provisions to ensure that those existing provisions will be consistent with the new regulatory proposals implementing section 334(b) of the Act. Finally, Customs included in the proposed Part 10 amendments a text to implement U.S. Note 2(b), Subchapter II, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS), which had not been previously treated in the regulations and which is similar in operation and effect to the cut-to-shape components provision of section 334(b)(4)(B) of the Act.

The May 23, 1995, notice of proposed rulemaking invited the public to submit comments on the proposed regulatory amendments for consideration by Customs before adoption of the proposals as a final rule. The public comment period closed on June 22, 1995.

Discussion of Comments

A total of 43 commenters responded to the solicitation of public comments in the May 23, 1995, notice of proposed rulemaking. The comments submitted, and the Customs responses thereto, are set forth below.

Effective date

Comment: Five commenters were concerned about the effective date of § 334 and the regulations implementing that statute. They stated that sometimes it is not possible to know the exact date goods will arrive in the United States. As a result, goods will be arriving after July 1, 1996, with the wrong visa. In order to avoid this problem, four commenters requested that Customs establish a grace period delaying the application of § 334 for such goods. One commenter suggested that the new regulations should only be applicable to goods shipped after July 1, 1996.

Customs Response: The effective date of § 334 is expressly set out in that statute. Section 334(c) provides that the provisions of § 334 ''shall apply to goods entered, or withdrawn for warehouse, for consumption on or after July 1, 1996.'' Section 334(c) contains an exception to that effective date only for goods contracted for prior to July 20, 1994, if a copy of the contract containing all material terms of sale was filed with Customs within 60 days after enactment of § 334 and the goods are entered, or withdrawn from warehouse, for consumption on or before January 1, 1998.

While Customs recognizes the potential problem faced by importers receiving land or sea shipments, the statute is clear as regards the effective date of its provisions, and Customs has no authority to deviate from the express terms of the statute. As regards the suggestion for a grace period to allow the entry of goods imported with incorrect visas, that issue falls within the jurisdiction of, and thus should be more properly addressed to, the Committee for the Implementation of Textile Agreements (CITA).

Scope of ''textile or apparel product''

Comment: Several commenters stated that the Customs decision to utilize the Agreement on Textiles and Clothing of the Agreement Establishing the World Trade Organization (the WTO Agreement) to determine the scope of section 334 of the Act constitutes an unauthorized broadening of that legislation. These commenters believe there is nothing to indicate that Congress meant to enlarge the scope of textiles and apparel products. The commenters noted the present position of Customs that the textile and apparel rules of origin contained in § 12.130 of the Customs Regulations (19 CFR 12.130) cover all goods classifiable in Section XI (Chapters 50 though 63), HTSUS, and any headings or subheadings outside Section XI for which a textile and apparel category number has been designated. On the other hand, these commenters noted that the Agreement on Textiles and Clothing of the WTO Agreement lists several HTSUS headings and subheadings outside Section XI which do not have a textile and apparel category number designation and which have not traditionally been considered within the class of goods known as textiles and apparel.

Customs response: Customs disagrees with the position advocated by these commenters. As noted in our discussion of this point in the May 23, 1995, notice of proposed rulemaking, the United States is a signatory to both the WTO Agreement and the Agreement on Textiles and Clothing annexed thereto. The latter agreement specifically defines the scope of ''textiles and clothing'' by a listing of headings and subheadings in the international Harmonized System. Customs also pointed out in the May 23, 1995, notice that three provisions of the Act outside section 334 specifically refer to the Agreement on Textiles and Clothing of the WTO Agreement. One of those provisions is section 332 which amended section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854) to specifically cite the Agreement on Textiles and Clothing of the WTO Agreement as a multilateral agreement concluded under the authority of section 204. Section 204, as amended, refers to world trade in ''the articles with respect to which the agreement [that is, any multilateral agreement concluded under the authority of section 204] was concluded'' and authorizes the President to issue regulations governing the entry or withdrawal from warehouse of ''the same articles'' which are products of countries not parties to the agreement or countries to which the United States does not apply the agreement. Thus, the product coverage of section 204 and of the regulations issued thereunder is a function of the agreements concluded under section 204, including the Agreement on Textiles and Clothing of the WTO Agreement. Since section 12.130 of the Customs Regulations was promulgated under the authority of section 204, the product coverage of § 12.130 must be the same as that of section 204.

Customs believes that it would be inappropriate to conclude that Congress, in drafting section 334 of the Act, was unmindful of the adoption of the Agreement on Textiles and Clothing of the WTO Agreement and the changes to section 204 made by section 332 of the Act, with the result that the regulations mandated by section 334 of the Act could be promulgated without regard to the product coverage of the Agreement on Textiles and Clothing of the WTO Agreement. In light of the context in which section 334 of the Act was enacted, Customs believes it is more proper to conclude that Congress intended that the regulations implementing section 334 of the Act include the products covered by the Agreement on Textiles and Clothing of the WTO Agreement for the specific and limited purpose of section 334 of the Act, that is, the determination of the country of origin of textile and apparel products, while recognizing that such products would also be covered by any regulations governing entry or withdrawal from warehouse that may be separately issued under the authority of section 204. Therefore, Customs does not believe that the scope of the regulations implementing section 334 of the Act should be controlled by the traditional scope of § 12.130 of the Customs Regulations. On the contrary, it seems clear that the product coverage of § 12.130 has been effectively expanded by the adoption of the Agreement on Textiles and Clothing of the WTO Agreement and by the amendment of section 204 effected by section 332 of the Act. Accordingly, Customs believes that the May 23, 1995, notice of proposed rulemaking reflects the correct position on this issue.

Section 102.21(b)(3)—Definition of ''knit to shape''

Comment: Section 334(b)(2)(B) of the Act provides that, notwithstanding the assembly rule contained in section 334(b)(1)(D), ''a textile or apparel product which is knit to shape shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which it is knit.'' A number of comments were submitted regarding the proposed definition of ''knit to shape'' in § 102.21(b)(3). That definition would require a good to have its entire exterior surface area, except for trimming around the neck and on the front opening, to be comprised of fabrics that have been knit or crocheted directly to the shape used in the good.

Two commenters suggested that Customs should maintain its present position, that is, that a good is knit to shape if any single major part has been knit to shape.

One commenter suggested that the term ''components'' be substituted for the term ''fabrics''.

Two commenters thought that the proposed definition was too rigid in that the incorporation into a garment of added components such as trim or pockets would disqualify a good from being considered ''knit to shape''. These commenters suggested that the definition be amended by adding the words ''or in principal part'' so that the definition would read ''. . . with an exterior surface area wholly or in principal part comprised of one or more fabrics knitted or crocheted directly to the shape used in the good . . .''

Three commenters noted that socks, pantyhose, tights, and other hosiery articles are knit to shape and their country of origin should be determined by where they were knit with no account taken of minor operations such as closing toes. One commenter specifically referred to gussets and top elastics in pantyhose, saying that the addition of those components should not change the country of origin from the country of knitting. One commenter wanted to ensure that tube-type T-shirts (T-shirts without side seams) were not considered to be knit to shape.

Customs response: Customs cannot agree to the suggestion to maintain the present position, because that position does not accurately reflect the language of section 334(b)(2)(B) of the Act. Customs does not believe that it was the intent of Congress, in providing a

special rule for knit to shape products, that a good should qualify as being knit to shape where that good contains only one panel knit or crocheted to shape.

Customs agrees that the word ''fabrics'' may be confusing and thus should not be used in the definition. However, Customs believes that ''parts'' would be preferable to ''components''.

Customs agrees that the proposed definition of ''knit to shape'' is too tightly drawn and thus unnecessarily restricts application of section 334(b)(2)(B) of the Act. However, Customs believes that the suggested additional language is imprecise and overly broad and thus would create uncertainty in the application of the definition.

Customs agrees that socks, pantyhose, tights, and other knitted hosiery goods should be covered by the definition of ''knit to shape'' without regard to minor finishing operations such as closing toes or adding gussets or top elastics. Whether a good such as a T-shirt is knit to shape depends on that particular good; however, Customs would not normally consider the knitting of a tube with no definitive contours to constitute the creation of a knit-to-shape good within the meaning of these origin rules.

In order to address the points made in the above comments on which Customs is in substantial agreement, the definition of ''knit to shape'' in § 102.21(b)(3) has been modified as set forth below to cover a good of which ''50 percent or more'' of the exterior surface area is formed by ''major parts'' knitted or crocheted directly to the shape as used in the good. The modified definition specifically excludes from consideration certain exterior features (that is, patch pockets, appliques, or the like) but includes ''sewing'' as one of the specified permisible minor operations. In addition, a new paragraph (b)(4) has been included in § 102.21 as set forth below to define ''major parts''; this definition is essentially the same as the definition of ''major parts'' set forth in Note (1)b in the Section XI rules under § 102.20 of the Customs Regulations (19 CFR 102.20). Under these definitions, there should be no uncertainty concerning the treatment of hosiery and similar goods that include features such as gussets and top elastics or that have been subjected to a toe closing operation.

Section 102.21(c)(2)—Goods Consisting of Materials That Meet the § 102.21(e) Tariff Shift and Other Requirements

Comment: Under proposed § 102.21(c)(2), where a good is not wholly the product of a single country, territory, or insular possession, the country of origin of the good is the single country, territory, or insular possession in which ''each foreign material'' in the good underwent an applicable change in tariff classification, and/or met any other requirement, specified in § 102.21(e). One commenter noted that this is inconsistent with the §§ 102.21 (b)(3) and (b)(5) definitions of ''knit to shape'' and ''wholly assembled'', which do not require that all of the materials in the good be knit to shape or wholly assembled in a single country, territory, or insular possession. This commenter suggested that only the portion of the good which imparts the essential character to that good should be required to comply with the applicable § 102.21(e) requirements.

Customs response: Customs does not agree. This comment appears to reflect a misunderstanding of the operation of the general rule in paragraph (c)(2) and the tariff shift and other requirements under paragraph (e). In this regard Customs notes that the definitions of ''knit to shape'' (as modified as discussed above) and ''wholly assembled'' make allowances (or exceptions) for some materials so that the presence of such materials will not affect the status of the good as ''knit to shape'' or ''wholly assembled''. Those exceptions are solely for the purpose of applying any § 102.21 general rule, tariff shift rule or other requirement in which the defined terms are used; they do not affect the question of whether a requisite tariff shift rule under paragraph (e) has been met. In other words, if a good in fact consists of ''knit to shape'' or ''wholly assembled'' components and those components meet the requisite tariff shift rule, any foreign materials (as defined in § 102.1(e)) incorporated in the good at issue that are excepted from the definitions in question would also undergo the requisite tariff shift.

Section 102.21(d)—Treatment of Sets

Comment: One commenter stated that since it is necessary to determine the origin of each textile and apparel component in a set, there is little point in referring to the origin of the entire set in § 102.21(d).

Customs response: Customs believes the wording of § 102.21(d) is correct. Section 102.21(d) covers situations in which two or more of the components in the set were produced in different countries. If all the components in a set are produced in a single country, there would be no need for separate determination of the origin of any textile or apparel components of the set.

Assembly

Comment: With regard to the definition of ''wholly assembled'' in § 102.21(b)(5), one commenter argued that Customs should be more specific concerning which subassemblies will not preclude a good from being ''wholly assembled''. This commenter suggested that this could be done by including in the regulation a specific listing of the assemblies that will qualify a good to be ''wholly assembled'', in the same manner as the Government of Hong Kong has done. In the alternative, this commenter suggested that the joining of all components of a good in one country would always be at least as important as the joining of components into a subassembly and, therefore, under the second multicountry rule (§ 102.21(c)(5), the last place where important processing occurs) the country of origin would be the place where the components of the good are assembled.

Customs response: Customs does not believe that it would be appropriate to have a rigid set of rules in the context mentioned by this commenter. In the opinion of Customs it would be preferable to address these interpretive issues on a case-by-case basis through the Customs ruling program whereby prospective importers may obtain appropriate advance guidance according to their particular needs. This will result in the eventual development of a body of decisions for the general guidance of importers based on consideration of a multitude of factors that cannot be anticipated at the present time. As regards the alternative suggestion of this commenter, Customs agrees with this interpretation and notes that the comment does not appear to warrant a change to the regulatory texts.

Fabric

Comment: Six commenters expressed the view that substantial finishing of greige fabric (*e.g.* dyeing and/or printing combined with other finishing processes) results in a new article of commerce and, therefore, the country of origin of such fabric should be the country in which those processes were performed. One commenter made essentially the same argument for yarns.

Customs response: Sections 334(b)(1)(B) and 334(b)(1)(C) of the Act set forth specific rules for determining the country of origin of yarns and fabric. Section 334(b)(1)(B) states that the country of origin of staple yarns is the country where the yarns were spun and that the country of origin of filament yarns is the country where the filaments were extruded. Section 334(b)(1)(C)

states that the country of origin of a fabric is the country in which the constituent fibers, filaments, or yarns were transformed (that is, into a fabric) by a fabric-making process. The language of §§ 334(b)(1)(B) and 334(b)(1)(C) is clear and unambiguous. Accordingly, it would be inappropriate for Customs to prescribe rules that would lead to results inconsistent with that statutory language.

Subheadings 5810.91–5810.99—Embroidery

Comment: Three commenters took issue with the proposed tariff shift rule for subheadings 5810.91 through 5810.99. They stated that it is unreasonable for the United States to consider the country of origin of embroidery in the piece or in strips to be the country where the base fabric was formed. These commenters argued that the embroidering of fabrics is a highly complex operation that requires a great deal of skill and expense. They also pointed out that the HTSUS refers to embroidery as ''embroidery'' or as ''Embroidery in the piece, [or] in strips,'' not as ''fabric''.

Customs response: Section 334(b)(1)(C) of the Act provides that the country of origin of a fabric is the country where the fabric was created by a fabric-making process. It is the view of Customs that embroidery, whether in the piece or in strips, is fabric. It is commonly known in the United States as embroidered fabric. If Customs were to agree that embroidery cannot be considered to be a fabric because the relevant tariff provisions do not specifically refer to embroidery as fabric, Customs would have to take the same position in regard to other fabrics which are not specifically referred to as such, *i.e.* netting, lace, gauze, felt, nonwovens, terry toweling, labels in the piece, belting, and hosepiping, all of which are imported as fabrics.

Customs also notes that the industry definition of piece goods supports the conclusion that embroidery in the piece is fabric. *Fairchild's Dictionary of Textiles*, 1970, defines ''Piece Goods'' as ''a general term for fabrics woven in lengths to be sold by the yard in retail stores. May also mean all goods which are not cut'' (at page 435). *The Modern Textile and Apparel Dictionary*, 4th Edition, 1973, defines ''Piece Goods'' as ''Cloth sold by the yard or some definite cut length'' (at page 422). Both dictionaries define ''Piece'' as standard lengths of woven fabric or cloth.

Although the commenters would have Customs distinguish embroidery in strips from other forms of embroidery, Customs believes that embroideries on base fabrics in strips are just as much fabrics as those strips without embroidery. Customs perceives no distinction between embroidering wide lengths of fabric and embroidering fabric strips. In either case, the process starts with fabric and ends with embroidered fabric.

The terms of § 334(b)(1)(C) of the Act are clear and Customs has no choice but to adhere to the express wording of that provision—the country of origin of embroidered fabric classifiable in subheadings 5810.91 through 5810.99 is the country in which the base fabric was formed by a fabric-making process.

However, in reviewing this area, Customs has determined that the proposed tariff shift rule for subheadings 5810.91 through 5810.99 does not accurately effectuate § 334(b)(1)(C) of the Act. In this regard Customs notes that under the proposed rule the country of origin of the embroidered fabric would not always be the country where the base fabric was formed. This is because the proposed rule refers to ''A change to subheading 5810.91 through 5810.99 * * *'', and where fabric is embroidered in a second country there has been no change to embroidered fabric in the country where the fabric was formed. Accordingly, the proposed tariff shift rule for subheadings 5810.91 through 5810.99 has been divided into three rules as set forth below with the first rule intended to address this problem (with regard to the other two rules, see the discussion below regarding embroidered badges, emblems, and similar articles).

Subheading 5810.10—Embroidery Without Visible Ground

Comment: A commenter complained that the country of origin of embroidery without a visible ground, classifiable in subheading 5810.10, should be the country where the embroidery was applied to the base fabric. The tariff shift rule proposed for subheading 5810.10 provided for a change to that subheading from any other heading.

Customs response: Customs agrees that the rule for subheading 5810.10 does not accomplish what was intended. The proposed tariff shift rule in question reflected the application of § 334(b)(3)(A) of the Act, the first multicountry rule. Customs believes that embroidery without a visible ground is a fabric that is not made by a fabric-making process because it comes into commercial existence after a base fabric is embroidered and the base fabric is removed. In the opinion of Customs, the most important manufacturing process in the production of embroidery without a visible ground is the application of the embroidery and not the removal of the ground. Accordingly, Customs intentionally required a shift from another heading so that the production prior to the removal of the base fabric would confer origin, because a change within the heading would allow the removal of the base fabric to confer origin. However, the proposed rule was inadvertently drafted to refer to a change ''to subheading 5810.10''. Thus, if fabric from country A were embroidered in country B and the ground fabric removed in country C, the tariff shift rule would not be satisfied and one would be required to go to the next applicable general rule to determine origin. In this circumstance, country B would properly be determined to be the country of origin by application of § 102.21(c)(4). However, Customs believes that for purposes of transparency, it is desirable, to the greatest extent possible, for a country of origin to be determinable by application of the rules referred to in § 102.21(c)(2) and contained in § 102.21(e) rather than by application of the multicountry rules of §§ 102.21(c)(4) and (5). Accordingly, the rule specified for subheading 5810.10 has been modified as set forth below to reflect these considerations.

Embroidered Badges, Emblems, and Similar Articles

Comment: One commenter expressed the view that embroidered badges or emblems are not fabrics and should not be treated as such.

Customs response: Customs agrees that badges, emblems, and similar embroidered articles are not imported in the form of fabric. However, the country of origin of badges, emblems, and similar embroidered articles is not necessarily where those goods were embroidered. Pursuant to § 334(b)(1)(D) of the Act, the country of origin of badges, emblems, and the like, which consist of two or more layers of fabric assembled together by gluing, sewing, or other means, is the country where the good was wholly assembled. A new second rule has been included in the rules for subheadings 5810.91 through 5810.99 as set forth below to reflect the application of § 334(b)(1)(D).

However, badges, emblems, and similar embroidered articles which are processed in more than one country and which do not have multiple components present certain other problems. Customs believes that there is a difference between emblems created by embroidery and printed emblems on which embroidery may be present merely to enhance the printed design.

Where embroidery forms the entire design and, therefore, creates the emblem, the determination of the country of origin of the emblem is governed by the first multicountry rule (§ 334(b)(3) of the Act and § 102.21(c)(4) of the regulations). With reference to the requirements of § 334(b)(3) and § 102.21(c)(4), the embroidery is the most important manufacturing process in the production of the good and, as a result, the country of origin of that good is the country, territory, or insular possession where the embroidery was created. However, where embroidery does not create the motif, but is present merely to enhance a printed design on the emblem, Customs does not believe that application of the embroidery should confer origin.

Customs has not been able to draft a tariff shift rule that adequately distinguishes between the two types of badges, emblems, and similar embroidered articles mentioned above. Accordingly, it was decided to make the tariff shift rule applicable to such goods (the proposed rule for subheadings 5810.91 through 5810.99, which is set forth below in modified form as the third rule for those subheadings) difficult to satisfy, that is, by requiring all manufacturing, from the forming of the fabric forward, to be done in a single country, territory, or insular possession. Thus, if an emblem, badge, etc., is produced in country A from fabric formed in country B, the tariff shift rule will not be satisfied and, in the hierarchy of rules, the next applicable rule is the first multicountry rule, § 102.21(c)(4), which provides that the country of origin will be the country, territory, or insular possession where the most important manufacturing process occurred. While Customs believes it is preferable in principle to employ the objective, specific tariff shift or related rules under §§ 102.21(c) (2) and (e), in some instances, as here, Customs has been unable to avoid a certain degree of subjectivity in the application of the appropriate rule of origin.

Application of § 334(b)(2)(A)—Special Rules for Specified Headings and Subheadings

Comment: Section 334(b)(2)(A) of the Act provides that the origin of goods classifiable under certain specified tariff provisions ''shall be determined under subparagraph (A), (B), or (C) of paragraph (1), as appropriate''. The May 23, 1995, notice of proposed rulemaking stated that since all of the headings and subheadings specified in § 334(b)(2)(A) cover goods that have been advanced beyond yarn or fabric form, the origin of those goods should be determined by the yarns (in the case of heading 5609) or the fabrics which comprise the good. Three commenters concurred with that position, stating that the majority of time, labor, and cost is in the greige fabric. One commenter specifically stated that § 334(b)(2)(A) is clear that the origin of the goods classifiable under the listed headings and subheadings is determined by the origin of the fabric from which the goods are constructed. However, six commenters objected to taking a restrictive interpretation of the words ''as appropriate'' and one, without mentioning the interpretation of those words, stated that the origin of goods of subheading 9404.90 should be determined by where they are assembled.

One commenter noted that the proposed tariff shift rule for subheading 9404.90, which covers comforters, quilts, etc., would result in the goods having their country of origin in the country where those goods are assembled. The commenter stated that this would be contrary to the terms of § 334(b)(2)(A) under which, notwithstanding the general assembly rule in § 334(b)(1)(D), the country of origin of goods classifiable under any of the headings or subheadings listed in that section will be the country that produced the yarns or fabrics, as appropriate, from which those goods are made.

Customs response: After reviewing all of the comments and the commenters' suggestions as to how the words ''as appropriate'' should be interpreted, Customs adheres to the position set forth in the May 23, 1995, notice. No commenter in opposition to the position proposed by Customs offered an acceptable legal alternative to that position. While several of the commenters cited judicial case law concerning the interpretation of statutes, all of their citations and quotations involved statutory language that was not the same as, or similar to, the language of § 334(b)(2)(A). Moreover, none of the interpretations suggested by those commenters adequately addressed the fact that all of the headings and subheadings listed in § 334(b)(2)(A) provide for goods made from materials and that, therefore, the most reasonable interpretation of that section is that it is *appropriate* to determine the origin of those goods according to § 334(b)(1)(B), the rule for yarns, or § 334(b)(1)(C), the rule for fabrics.

The comment regarding the tariff shift rule for subheading 9404.90 prompted Customs to review the proposed tariff shift rules for all of the headings and subheadings listed in § 334(b)(2)(A). That review disclosed that Customs erred in the proposal for subheading 9404.90 and in the proposed rules for the other 15 listed headings or subheadings because, in each instance, the proposed rule both referred to a change to the named heading or subheading and included a proviso regarding the process by which the change must result. For example, if a fabric is woven in one country and wholly assembled in a second country into a good subject to § 334(b)(2)(A), the required tariff shift change does not occur in the country in which the fabric was formed (in other words, the change does not result from a fabric-making process as prescribed in the applicable proposed rule). As a result and as the above commenter noted, the terms of the tariff shift rule would not be met and the next relevant general rule, § 102.21(c)(3)(ii), would cause the country of origin of that good to be the country of assembly. Therefore, each of the rules for the headings and subheadings listed in § 334(b)(2)(A) has been modified as set forth below to provide that the country of origin of a good classifiable under those headings or subheadings is either the country of origin of the yarns (in the case of heading 5609) or of the fabric (for the rest of the listed headings or subheadings) from which those goods are made.

In addition, since the clear intent of § 334(b)(2)(A) is to eliminate assembly from conferring origin in the case of goods classifiable under any of the provisions listed in that section, § 102.21(c)(3)(ii) has been modified as set forth below to preclude assembly from automatically conferring origin on those goods when the § 102.21(c)(2) tariff shift or other requirements are not met (*e.g.* when a good is made from fabrics originating in different countries).

Multicountry rules

Comment: Eight commenters stated, in one fashion or another, that the proposed multicountry rules (§§ 102.21(c) (4) and (5)) should be made clearer, either by adding definitions or by adding examples.

Customs response: Given the wide variety of textile and apparel products and the multiplicity of manufacturing processes involving those products, Customs is adverse to defining the terms ''most important assembly or manufacturing process'' and ''important assembly or manufacturing process'' which form the basis of the multicountry rules. Customs recognizes that the concern underlying the submitted comments revolves around

the meaning of the word ''important'', and, in fact, during the development of the proposed regulatory texts Customs decided to eschew use of definitions calling for comparisons of such criteria as time involved in processing, labor and other costs of processing, complexity, and value added. Customs views the word ''important'' as referring to the relative significance of the manufacturing or assembly processes involved in the production of a good; thus, the word ''important,'' has the same connotation as the word ''meaningful''. Accordingly, in determining relative importance, a manufacturing operation in a low wage country is no less important to the production of a good than that same manufacturing operation in a high wage country, nor is a manufacturing operation done by an expensive machine more important than that same manufacturing operation done by hand.

There is only one example, discussed elsewhere in this document, on which Customs has reached a definitive conclusion regarding relative importance of manufacturing processes: forming a fabric is a more important process than cutting that fabric. Decisions on all other comparisons must be made on a case-by-case basis according to the specific facts presented. Customs recognizes that this may appear to leave importers with a degree of uncertainty. However, Customs believes that a large proportion of multicountry processing is unnecessary from a manufacturing standpoint and thus is done more for quota-engineering purposes, that is, for the primary purpose of avoiding quantitative restraints imposed by international agreements. Moreover, if a manufacturer or importer has any doubts about which country, territory, or insular possession is the country of origin of its goods, that party may obtain appropriate advance guidance under the Customs ruling program.

Cutting and Products of Insular Possessions

Comment: The May 23, 1995, notice of proposed rulemaking stated that Customs believes cutting was not intended to play any role in determining the country of origin of textile and apparel products. That statement raised the question, both within Customs and among members of the importing public, of whether Customs would continue the current tariff treatment of garments that are cut and assembled in insular possessions.

General Note 3(a)(iv), HTSUS, provides that goods of insular possessions are excepted from duty if, among other requirements, they are ''manufactured or produced in any such possession from materials the growth, product, or manufacture'' of that insular possession. Customs has ruled that this portion of General Note 3(a)(iv) may be satisfied by *two* significant manufacturing or processing operations. Under existing rulings, the cutting of fabric into garment parts and the assembly of those parts into garments are normally considered by Customs to constitute the required two significant manufacturing or processing operations that would qualify the garments for duty-free treatment.

One commenter wanted Customs to retain cutting as a process that confers origin. Nine commenters were concerned that the language in the May 23, 1995, notice of proposed rulemaking meant that garments cut and assembled in insular possessions would no longer be eligible for duty-free entry. Two commenters argued that cutting is equal to, or more important than, forming fabric while three commenters stated that cutting fabric is a very small part of producing a garment. One commenter referred specifically to the importance, for origin purposes, of the high degree of precision and expense involved in cutting components for men's tailored clothing. Many of the commenters pointed out that there is no evidence to indicate that Congress intended to change the tariff status of apparel goods cut and assembled in insular possessions. Other commenters noted that General Note 3(a)(iv) was intended by Congress to benefit insular possessions and should, therefore, be liberally construed. A number of commenters were concerned that Customs would never consider cutting when determining the origin of textiles and apparel products and expressed their disagreement with that position. Several commenters noted that there is nothing in § 334 of the Act that requires Customs to ignore entirely the role cutting plays in the manufacture of textile and apparel articles. Some commenters also pointed out that General Note 3(a)(iv) concerns preferential duty status of goods rather than the determination of their origin.

Customs response: Customs concurs with most of the commenters on this issue that, since § 334 deals with the country of origin of textile and apparel products and not with value requirements for purposes of duty preferences, § 334 will not affect either foreign material value determinations required under General Note 3(a)(iv) or value-added requirements contained in other statutory provisions. Accordingly, Customs intends to continue its current tariff treatment of garments which are cut and assembled in insular possessions.

Nevertheless, Customs believes that the position that cutting is not an origin-conferring process is correct for *country of origin* determinations. While cutting is a process which may be considered to be an important manufacturing process, as between the production of fabric and the cutting of that fabric to shape, fabric production is considered to be the more important process. The intent of Congress to not allow cutting of fabric to confer origin is demonstrated by the adoption of § 334(b)(4) of the Act which continues the present tariff treatment of components cut to shape in the United States from imported fabric and sent abroad for assembly: if Congress had intended the cutting of components from fabric to confer origin, there would have been no need for § 334(b)(4). Thus, when applying the first multicountry rule (§ 102.21(c)(4), which provides that the most important assembly or manufacturing process will determine the country of origin), the country which produced the fabric will be determined to be the country of origin of unassembled components merely cut from fabric in another country.

Components Cut in the United States

Comment: Three commenters wrote in support of the continuation of the treatment accorded goods by subheading 9802.00.80, HTSUS.

Customs response: These comments reflect some apparent confusion regarding the overall effect of § 334 of the Act in this area.

Under the present rules of origin, cutting apparel components from fabric (regardless of the country of origin of that fabric) will usually result in the cut components being considered a product of the country where the cutting is performed. Thus, when foreign fabric is imported into the United States and cut into apparel components, the United States is the country of origin of those components. Accordingly, if apparel components cut from foreign fabric in the United States are exported for assembly and the assembled goods are then imported into the United States, pursuant to subheading 9802.00.80, HTSUS, duty may be assessed on the full value of the imported goods less the cost or value of the components cut in the United States.

As previously noted, Congress adopted § 334(b)(4) because §§ 334(b) (1) and (2) of the Act in effect eliminate cutting as a process conferring origin for most purposes. Under § 334(b)(4), where goods are assembled abroad from components cut in the United States

from foreign fabric (even though under the § 334 rules the cut components are not products of the United States and the assembling country is the country of origin), the assembled goods, when imported into the United States, will continue to receive the same duty treatment presently accorded to such goods under subheading 9802.00.80, HTSUS. Thus, because § 334(b)(4) serves to preserve a tariff treatment that otherwise would no longer be available under the § 334 origin rules, this statutory provision in effect addresses the concern of these commenters.

World Trade Organization and NAFTA Obligations

Comment: Twelve commenters believed that the proposed rules are in violation of the Uruguay Round Agreement and the obligations the United States agreed to when it became a member of the World Trade Organization (WTO). While some commenters questioned why the United States is making significant changes in its textile origin rules at the same time that the WTO is embarking on a project involving the development of international uniform rules of origin, two other commenters expressed the view that the proposed rules will simplify the WTO work on harmonized rules of origin. Several commenters stated that the new origin rules will change the applicable textile restraint categories for many products, creating problems in the administration of international textile agreements.

A number of commenters referred to the obligations the United States incurred under the North American Free Trade Agreement (NAFTA). Two commenters made the general statement that § 334(b)(2)(A) of the Act was contrary to the NAFTA, and a third commenter made the same statement but with specific reference to Article 309(1) of the NAFTA. Four commenters noted that the proposed rules conflicted with the NAFTA marking rules, and one of these commenters argued that Canada has a reasonable expectation that established marking rules will continue in effect. Another commenter observed that the proposed rules will cause some goods now subject to Tariff Preference Levels (TPLs) under the NAFTA to no longer be considered products of a NAFTA party, with the result that those goods will not be allowed entry into the United States under a TPL.

One commenter stated that if the country in which down comforters are assembled is not the country of origin of those goods, in order to avoid an unfair advantage for Canadian and Mexican comforter manufacturers, Customs should clearly state that the NAFTA preference rules do not govern goods processed in a NAFTA country that fall within the scope of § 334 of the Act.

Another commenter thought that the wording of proposed § 102.21 is ambiguous concerning the application of § 102.19 (the ''NAFTA preference override'' provision) to ''originating goods'' under the NAFTA.

Customs response: In discussing § 334, both the President's Statement of Administrative Action and the relevant Senate report stated that § 334 would more accurately reflect where the most significant production activity occurs, would help combat transshipment and other circumvention of textile and apparel quotas, would bring the U.S. rules of origin in line with rules employed by other major textile and apparel importing countries and by U.S. trading partners, and would advance the goal of harmonizing international rules of origin set out in the WTO Agreement on Rules of Origin. It was also noted that, pursuant to Article 4 of the Agreement on Textiles and Clothing which provides for consultations in the case of a disruption of trade or an adverse affect on market access, the Administration will undertake consultations ''where appropriate''.

It is not the function of Customs to determine whether the enactment of § 334 constitutes a breach of either the WTO Agreement or the NAFTA. Both agreements have specified procedures for signatory parties to follow if it is believed that another signatory has violated its commitments. Accordingly, the question of whether there has been a violation of a provision of the WTO Agreement on Rules of Origin or of the NAFTA is a matter to be decided within the framework of those agreements.

With regard to the comment on down comforters, Customs is unable to accede to this commenter's request. Section 334(b)(1) of the Act opens with the words ''[e]xcept as otherwise provided for by statute,'' and Customs followed this statutory language by including in the first sentence of proposed § 102.21(a) the words ''except as otherwise provided for by statute''; thus, origin rules contained in other statutes will take precedence over the origin rules in § 334 and in § 102.21 of the regulations. The NAFTA rules of origin for duty preference purposes are set forth in 19 U.S.C. 3332 and in General Note 12, HTSUS. Accordingly, if, as in the case of down comforters, the NAFTA origin rule for duty preference purposes is less restrictive than the corresponding rule contained in § 334 of the Act and in § 102.21 of the regulations, then the NAFTA origin rule will control for NAFTA duty preference purposes.

As regards the alleged ambiguity between § 102.19 and § 102.21, Customs does not believe that any change to the proposed regulatory texts is appropriate in this regard. Section 102.19 was originally adopted in a strictly NAFTA context in order to clarify the relationship between the Part 102 NAFTA marking rules and the separate rules of origin that apply under the NAFTA for duty preference purposes. Proposed § 102.21(c) included § 102.19 among the existing Part 102 provisions that may apply for purposes of the § 102.21(c) general rules because a failure to mention § 102.19 in this context might incorrectly give the impression, contrary to the express terms of § 334 as discussed in the preceding comment response, that the rules of origin applicable to ''originating goods'' under the NAFTA do not take precedence over the § 102.21 provisions.

Miscellaneous Goods

Comment: One commenter stated that the manufacture of goods classifiable in headings 5604–5609, 5808–5809, 5901–5903, 5905–5908 and 5910 and in subheading 5911.90 requires special equipment and knowledge and, therefore, the tariff shift rule for those provisions should prescribe a change from any other heading.

Customs response: The proposed tariff shift rules for each of the mentioned headings and subheading were carefully drafted to reflect the express requirements of § 334(b) of the Act. Most of those headings mentioned by the commenter provide specifically for yarns, cordage, braids, or fabrics, and § 334(b) is very specific regarding the rules for determining the origin of those goods. In some instances, the proposed tariff shift rule was drafted to reflect that assembly (under § 334(b)(1)(D) of the Act) confers origin. In a very few instances (*e.g.* fishing nets of heading 5608), the tariff shift rule was drafted to reflect the application of the first multicountry rule (§ 334(b)(3)(A) of the Act and § 102.21(c)(4) of the regulations). To do as this commenter suggested would cause the application of the tariff shift rules to result, for some goods, in determinations of origin not consistent with the requirements of § 334(b).

Miscellaneous Issues

Comment: Five commenters referred to the substantial transformation concept, noting variously that there is no definition of ''substantial transformation'' in the proposed regulatory texts, that the proposed texts

do not comply with accepted principles of what constitutes a substantial transformation, or that the United States should retain substantial transformation as the basis for determining the origin of imported goods. One commenter also noted that there is no value-added criterion. In addition, while two commenters noted that the rules in § 334 of the Act are more similar to the rules followed by the rest of the industrialized nations than are the present rules applied by Customs, another commenter noted that § 334(b)(2)(A) of the Act (the special rule of origin listing 16 provisions which are not subject to the assembly rule) is not consistent with rules applied by Canada. One commenter pointed out that § 334 conflicts with past practices and rulings of Customs. Finally, one commenter expressed concern that the rules of origin contained in § 334 are inconsistent with the Federal Trade Commission Regulation in 16 CFR 303.33(a)(3) which requires that each textile product made in the United States in whole or part of imported materials contain a label disclosing those facts.

Customs response: Section 334 is a Congressionally enacted statute and, as such, it prevails over all prior U.S. regulations, rulings, and judicial decisions that are inconsistent with its terms, and it applies without regard to the laws of other countries. It provides an objective set of rules to be applied without reference to the substantial transformation concept, which is the present basis applied generally by the courts and by Customs for determining the origin of merchandise processed in more than one country. While § 334 may represent the view of Congress concerning how it believes the substantial transformation principle should be applied, when the origin provisions of § 334 take effect on July 1, 1996, they will effectively remove from consideration the question of whether or not a processing or manufacturing operation constitutes a substantial transformation for most Customs and related purposes. With regard to the cited Federal Trade Commission regulations, Customs would also note that those regulations are promulgated under separate statutory authority applicable to that agency and, therefore, the issue of the alleged inconsistency is not a matter that can be unilaterally addressed by Customs in the regulations implementing § 334.

Other Changes to the Regulatory Texts

In addition to the changes to the proposed regulatory texts discussed above in connection with the public comments, Customs has determined that a number of other changes should be made to the proposed texts based on further internal review. These changes are discussed below.

Section 10.26(c)(3)

In proposed new § 10.26, paragraph (a) implemented the provisions of U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS, paragraph (b) implemented the provisions of § 334(b)(4)(B) of the Act, and paragraph (c) set forth definitions or rules for purposes of the section as a whole. In paragraph (c)(3) which set forth a rule regarding entry into the commerce of a non-beneficiary country, reference was made to a ''component'' (which is the term used in § 334(b)(4)(B) of the Act) but references to a ''material'' and an ''ingredient'' (which are terms used in U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS) were inadvertently omitted. The text of § 10.26(c)(3) as set forth below has been modified to correct this oversight.

Section 102.21(b)(2)—Definition of ''fabric-making process''

In reviewing proposed § 102.21(b)(2), Customs discovered that fabric strips were inadvertently omitted from the list of materials which may comprise a fabric. It has been the experience of Customs that a fabric may be formed (usually woven) with narrow fabric strips. While fabric strips are not a material specifically mentioned in § 334(b)(1)(C) of the Act, Customs is of the view that the formation of a fabric from fabric strips is a fabric-making process and should be treated as such in the regulations, in particular for purposes of applying those § 102.21(e) tariff shift or other requirements that specifically refer to a ''fabric-making process''. Customs also notes that the first multicountry rule (§ 334(b)(3)(A) of the Act and § 102.21(c)(4) of the regulations) would yield the same result because, in the case of a fabric, the most important manufacturing process is the actual forming of the fabric. Accordingly, § 102.21(b)(2) as set forth below has been modified to reflect that a fabric-making process may include a manufacturing operation which begins with fabric strips.

Subheading 5808.10

Customs inadvertently omitted the word ''other'' before the word ''heading'' in the first proposed tariff shift rule for subheading 5808.10. In order to eliminate any possible confusion and conform the wording to that used in other tariff shift rules, the first tariff shift for subheading 5808.10 as set forth below has been modified accordingly.

Heading 5904

Since lamination of preexisting components is considered to be an assembly, the proposed tariff shift rule for heading 5904 provided a meaningful rule for goods that have been manufactured by a lamination process. However, that tariff shift rule did not provide for goods of heading 5904 that have been produced by means of a coating process. In view of the various manufacturing processes used in the production of such coated goods and the differences in materials that may be used, Customs does not believe that it is feasible to craft a tariff shift rule for those goods. Consequently, the country of origin of goods of heading 5904 produced by means of a coating process must be determined by application of the multicountry rules in §§ 102.21(c)(4) and (5). Accordingly, the proposed tariff shift rule for heading 5904 has been replaced by two rules as set forth below to reflect these considerations, the first rule covering goods that are wholly assembled by means of a laminating process and the second rule covering all other goods.

Subheadings 5911.10–5911.40

On further review of the proposed tariff shift rule for subheadings 5911.10 through 5911.40, Customs found that no provision was made for application of the assembly rule (§ 334(b)(1)(D) of the Act) to goods classifiable in subheadings 5911.31 through 5911.32 fitted with linking devices. Customs notes in this regard that the combining of linking devices with textile fabrics or felts may constitute an assembly, in which case § 334(b)(1)(D) would apply to determine the country of origin. Accordingly, the proposed tariff shift rule for subheadings 5911.10 through 5911.40 has been modified as set forth below (1) by setting forth a rule separately both for subheading 5911.10 through 5911.20 and for subheading 5911.40 and with no change in substance and (2) by including two separate rules for subheadings 5911.31 through 5911.32, the first of which follows the originally proposed rule and the second of which is intended to cover goods incorporating such linking devices.

Subheading 5911.90

On further review of the three tariff shift rules proposed for subheading 5911.90, Customs has determined that the first and third rules overlap in terms of goods covered. The first rule is for ''goods of yarn, rope, cord, braid'' and thus includes made up articles which,

using normal classification principles, would be considered to be ''of'' the named materials. The third rule specifically covers goods which are made up articles. To eliminate this overlap, the third tariff shift rule for subheading 5911.90 has been modified as set forth below by the addition of an exception clause for goods subject to the first tariff shift rule.

Headings 6501 and 6503

Headings 6501 and 6503 cover goods of felt. When the proposed tariff shift rules for these headings were drafted, Customs inadvertently included, in the exception clause in the second tariff shift rule for each heading, a reference to heading 5603 which covers nonwovens; the reference should have been to heading 5602 which provides for felts. Accordingly, the second tariff shift rule for each of these headings has been modified as set forth below to correct this error.

Issuance of Rulings During the Interim Period

Although this final rule action is effective 30 days after its publication in the **Federal Register**, Customs notes that the final regulatory provisions set forth herein that implement the provisions of section 334 of the Act apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, in keeping with the effective date set forth in section 334. Customs recognizes that the realities of the textile and apparel trade often require sourcing and production decisions long in advance of the ultimate date of importation of the goods. In order to ensure that prospective importers may have appropriate advance guidance regarding the Customs interpretation of the final regulations set forth in this document, Customs has determined that the Customs ruling program should accommodate ruling requests regarding those regulatory texts during the interim period between the effective date of this final rule action and the applicability date for the regulatory texts rather than only after the section 334(b) provisions take effect. Accordingly, Customs will accept requests for rulings on the regulatory texts set forth herein, submitted in accordance with the provisions of Part 177 of the Customs Regulations (19 CFR Part 177), commencing 30 days after the date of publication of this final rule document in the **Federal Register**.

Conclusion

Accordingly, based on the comments received and the analysis of those comments and based on the additional considerations as discussed above, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes thereto as discussed above and set forth below. As a consequence of the adoption of these substantive regulatory amendments, this document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) under control number 1515–0207. The estimated average annual burden associated with this collection is 1.5 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, D.C. 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 12

Customs duties and inspection, Labeling, Marking, Reporting and recordkeeping requirements, Textiles and textile products.

19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

19 CFR Part 178

Collections of information, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, for the reasons stated above, Parts 10, 12, 102 and 178, Customs Regulations (19 CFR Parts 10, 12, 102 and 178), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and the specific authority citations for §§ 10.191–10.198 continue to read, and a specific authority citation for §§ 10.25 and 10.26 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.25 and 10.26 also issued under 19 U.S.C. 3592;

* * * * *

Sections 10.191–10.198 also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

2. Sections 10.25 and 10.26 are added under the heading ''Articles assembled abroad with United States components'' to read as follows:

§ 10.25 Textile components cut to shape in the United States and assembled abroad.

Where a textile component is cut to shape (but not to length, width, or both) in the United States from foreign fabric and exported to another country, territory, or insular possession for assembly into an article that is then returned to the United States and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, the value of the textile component shall not be included in the dutiable value of the article. For purposes of determining whether a reduction in the dutiable value of an imported article may be allowed under this section:

(a) The terms ''textile component'' and ''fabric'' have reference only to goods covered by the definition of ''textile or apparel product'' set forth in § 102.21(b)(4) of this chapter;

(b) The operations performed abroad on the textile component shall conform to the requirements and examples set forth in § 10.16 insofar as they may be applicable to a textile component; and

(c) The valuation and documentation provisions of §§ 10.17, 10.18, 10.21 and 10.24 shall apply.

§ 10.26 Articles assembled or processed in a beneficiary country in whole of U.S. components or ingredients; articles assembled in a beneficiary country from textile components cut to shape in the United States.

(a) No article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710, Harmonized Tariff Schedule of the United States (HTSUS)) shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled or processed in a beneficiary country in whole of fabricated components that are a product of the United States; or

(2) If the article is processed in a beneficiary country in whole of ingredients (other than water) that are a product of the United States; and

(3) Neither the fabricated components, materials or ingredients after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(b) No article (except a textile or apparel product) entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled in a beneficiary country in whole of textile components cut to shape (but not to length, width, or both) in the United States from foreign fabric; or

(2) If the article is assembled in a beneficiary country in whole of both textile components described in paragraph (b)(1) of this section and components that are products of the United States; and

(3) Neither the components after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(c) For purposes of this section:

(1) The terms ''textile article'', ''apparel article'', and ''textile or apparel product'' cover all articles, other than footwear and parts of footwear, that are classifiable in an HTSUS subheading which carries a textile and apparel category number designation;

(2) The term ''beneficiary country'' has the meaning set forth in § 10.191(b)(1); and

(3) A component, material, ingredient, or article shall be deemed to have not entered into the commerce of any foreign country other than a beneficiary country if:

(i) The component, material, or ingredient was shipped directly from the United States to a beneficiary country, or the article was shipped directly to the United States from a beneficiary country, without passing through the territory of any non-beneficiary country; or

(ii) Where the component, material, ingredient, or article passed through the territory of a non-beneficiary country while en route to a beneficiary country or the United States:

(A) The invoices, bills of lading, and other shipping documents pertaining to the component, material, ingredient, or article show a beneficiary country or the United States as the final destination and the component, material, ingredient, or article was neither sold at wholesale or retail nor subjected to any processing or other operation in the non-beneficiary country; or

(B) The component, material, ingredient, or article remained under the control of the customs authority of the non-beneficiary country and was not subjected to operations in that non-beneficiary country other than loading and unloading and activities necessary to preserve the component, material, ingredient, or article in good condition.

3. In § 10.195, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f) respectively and a new paragraph (d) is added to read as follows:

§ 10.195 Country of origin criteria.

* * * * *

(d) *Textile components cut to shape in the U.S.* The percentage referred to in paragraph (c) of this section may be attributed in whole or in part to the cost or value of a textile component that is cut to shape (but not to length, width, or both) in the U.S. (including the Commonwealth of Puerto Rico) from foreign fabric and exported to a beneficiary country for assembly into an article that is then returned to the U.S. and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. For purposes of this paragraph, the terms ''textile component'' and ''fabric'' have reference only to goods covered by the definition of ''textile or apparel product'' set forth in § 102.21(b)(4) of this chapter.

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.130 and 12.131 also issued under 7 U.S.C. 1854;

* * * * *

2. In § 12.130:

a. the last sentence of paragraph (b) is amended by adding after ''Mexico'' the words '', and the origin of textile and apparel products covered by § 102.21 of this chapter,'';

b. the last sentence of the introductory text of paragraph (d) is amended by adding after ''Mexico'' the words '', and the origin of textile and apparel products covered by § 102.21 of this chapter,''; and

c. the introductory text of paragraph (e)(1) is amended by adding after ''Mexico'' the words ''and except for textile and apparel products''.

PART 102—RULES OF ORIGIN

1. The authority citation for Part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

2. Section 102.0 is amended by removing the word ''This'' at the beginning of the first sentence and adding, in its place, the words ''Except in the case of goods covered by § 102.21, this'' and by adding a sentence at the end to read as follows:

§ 102.0 Scope.

* * * The rules for determining the country of origin of textile and apparel products set forth in § 102.21 apply for the foregoing purposes and for the other purposes stated in that section.

3. Section 102.11 is amended by adding an introductory paragraph before paragraph (a) to read as follows:

§ 102.11 General rules.

The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

* * * * *

4. Section 102.21 is added to read as follows:

§ 102.21 Textile and apparel products.

(a) *Applicability.* Except for purposes of determining whether goods originate in Israel or are the growth, product, or

manufacture of Israel, and except as otherwise provided for by statute, the provisions of this section shall control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws and the administration of quantitative restrictions. The provisions of this section shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996.

(b) *Definitions.* The following terms shall have the meanings indicated when used in this section:

(1) *Country of origin.* The term country of origin means the country, territory, or insular possession in which a good originates or of which a good is the growth, product, or manufacture.

(2) *Fabric-making process.* A *fabric-making process* is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric.

(3) *Knit to shape.* The term *knit to shape* applies to any good of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the good, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether a good is ''knit to shape.''

(4) *Major parts.* The term *major parts* means integral components of a good but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts.

(5) *Textile or apparel product.* A *textile or apparel product* is any good classifiable in Chapters 50 through 63, Harmonized Tariff Schedule of the United States (HTSUS), and any good classifiable under one of the following HTSUS headings or subheadings:

3005.90
3921.12.15
3921.13.15
3921.90.2550
4202.12.40–80
4202.22.40–80
4202.32.40–95
4202.92.15–30
4202.92.60–90
6405.20.60
6406.10.77
6406.10.90
6406.99.15
6501
6502
6503
6504
6505.90
6601.10–99
7019.10.15
7019.10.28
7019.20
8708.21
8804
9113.90.40
9404.90.10
9404.90.80–95
9502.91
9612.10.9010

(6) *Wholly assembled.* The term ''wholly assembled'' when used with reference to a good means that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or insular possession. Minor attachments and minor embellishments (for example, appliques, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as ''wholly assembled'' in a single country, territory, or insular possession.

(c) *General rules.* Subject to paragraph (d) of this section, the country of origin of a textile or apparel product shall be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.

(1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.

(2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

(3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

(d) *Treatment of sets.* Where a good classifiable in the HTSUS as a set includes one or more components that are textile or apparel products and a single country of origin for all of the components of the set cannot be determined under paragraph (c) of this section, the country of origin of each component of the set that is a textile or apparel product shall be determined separately under paragraph (c) of this section.

(e) *Specific rules by tariff classification.* The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

HTSUS	Tariff shift and/or other requirements
3005.90	If the good contains pharmaceutical substances, a change to subheading 3005.90 from any other heading; or If the good does not contain pharmaceutical substances, a change to subheading 3005.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5601 through 5603, 5801 through 5804, 5806, 5809, 5903, 5906 through 5907, and 6001 through 6002.
3921.12.15	A change to subheading 3921.12.15 from any other heading.
3921.13.15	A change to subheading 3921.13.15 from any other heading.

HTSUS	Tariff shift and/or other requirements
3921.90.2550	A change to subheading 3921.90.2550 from any other heading.
4202.12.40–4202.12.80	A change to subheading 4202.12.40 through 4202.12.80 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.22.40–4202.22.80	A change to subheading 4202.22.40 through 4202.22.80 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.32.40–4202.32.95	A change to subheading 4202.32.40 through 4202.32.95 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.15–4202.92.30	A change to subheading 4202.92.15 through 4202.92.30 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.60–4202.92.90	A change to subheading 4202.92.60 through 4202.92.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5001–5002	A change to heading 5001 through 5002 from any other chapter.
5003	A change to heading 5003 from any other heading, provided that the change is the result of garnetting. If the change to heading 5003 is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5004–5006	(1) If the good is of staple fibers, a change to heading 5004 through 5006 from any heading outside that group, provided that the change is the result of a spinning process. (2) If the good is of filaments, a change to heading 5004 through 5006 from any heading outside that group, provided that the change is the result of an extrusion process.
5007	A change to heading 5007 from any other heading, provided that the change is the result of a fabric-making process.
5101–5103	A change to heading 5101 through 5103 from any other chapter.
5104	A change to heading 5104 from any other heading.
5105	A change to heading 5105 from any other chapter.
5106–5110	A change to heading 5106 through 5110 from any heading outside that group, provided that the change is the result of a spinning process.
5111–5113	A change to heading 5111 through 5113 from any heading outside that group, provided that the change is the result of a fabric-making process.
5201	A change to heading 5201 from any other chapter.
5202	A change to heading 5202 from any other heading, provided that the change is the result of garnetting. If the change to heading 5202 is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5203	A change to heading 5203 from any other chapter.
5204–5207	A change to heading 5204 through 5207 from any heading outside that group, provided that the change is the result of a spinning process.
5208–5212	A change to heading 5208 through 5212 from any heading outside that group provided the change is the result of a fabric-making process.
5301–5305	(1) Except for waste, a change to heading 5301 through 5305 from any other chapter. (2) For waste, a change to heading 5301 through 5305 from any heading outside that group, provided that the change is the result of garnetting. If the change is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5306–5307	A change to heading 5306 through 5307 from any heading outside that group, provided that the change is the result of a spinning process.
5308	(1) Except for paper yarns, a change to heading 5308 from any other heading, provided that the change is the result of a spinning process. (2) For paper yarns, a change to heading 5308 from any other heading, except from heading 4707, 4801 through 4806, 4811, and 4818.
5309–5311	A change to heading 5309 through 5311 from any heading outside that group, provided that the change is the result of a fabric-making process.
5401–5406	A change to heading 5401 through 5406 from any other heading, provided that the change is the result of an extrusion process.
5407–5408	A change to heading 5407 through 5408 from any heading outside that group, provided that the change is the result of a fabric-making process.
5501–5502	A change to heading 5501 through 5502 from any other chapter, provided that the change is the result of an extrusion process.
5503–5504	A change to heading 5503 through 5504 from any other chapter, except from Chapter 54.
5505	A change to heading 5505 from any other heading, provided that the change is the result of garnetting. If the change is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5506–5507	A change to heading 5506 through 5507 from any other chapter, except from Chapter 54.
5508–5511	A change to heading 5508 through 5511 from any heading outside that group, provided that the change is the result of a spinning process.
5512–5516	A change to heading 5512 through 5516 from any heading outside that group, provided that the change is the result of a fabric-making process.
5601	(1) A change to wadding of heading 5601 from any other heading, except from heading 5105, 5203, and 5501 through 5507. (2) A change to flock, textile dust, mill neps, or articles of wadding, of heading 5601 from any other heading or from wadding of heading 5601.
5602–5603	A change to heading 5602 through 5603 from any heading outside that group, provided that the change is the result of a fabric-making process.
5604	(1) If the textile component is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5604 from any other heading, except from heading 5001 through 5007, 5401 through 5408, and 5501 through 5502, and provided that the change is the result of an extrusion process.

HTSUS	Tariff shift and/or other requirements
	(2) If the textile component is of staple fibers, a change of those fibers to heading 5604 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5605–5606	If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5605 through 5606 from any other heading, except from heading 5001 through 5007, 5401 through 5408, and 5501 through 5502, and provided that the change is the result of an extrusion process; or If the good is of staple fibers, a change of those fibers to heading 5605 through 5606 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5607	If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5607 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5511, and provided that the change is the result of an extrusion process; or If the good is of staple fibers, a change of those fibers to heading 5607 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5608	(1) A change to netting of heading 5608 from any other heading, except from heading 5804, and provided that the change is the result of a fabric-making process. (2) A change to fishing nets or other made up nets of heading 5608: (a) If the good does not contain nontextile attachments, from any other heading, except from heading 5804 and 6002, and provided that the change is the result of a fabric-making process; or (b) If the good contains nontextile attachments, from any heading, including a change from another good of heading 5608, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5609	(1) If of continuous filaments, including strips, the country of origin of a good classifiable under heading 5609 is the country, territory, or insular possession in which those filaments, including strips, were extruded. (2) If of staple fibers, the country of origin of a good classifiable under heading 5609 is the country, territory, or insular possession in which those fibers were spun into yarns.
5701–5705	A change to heading 5701 through 5705 from any other chapter.
5801–5803	A change to heading 5801 through 5803 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 6002, and provided that the change is the result of a fabric-making process.
5804.10	A change to subheading 5804.10 from any other heading, except from heading 5608, and provided that the change is the result of a fabric-making process.
5804.21–5804.30	A change to subheading 5804.21 through 5804.30 from any other heading, provided that the change is the result of a fabric-making process.
5805	A change to heading 5805 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process.
5806	A change to heading 5806 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 5801 through 5803, and provided that the change is the result of a fabric-making process.
5807	The country of origin of a good classifiable under heading 5807 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
5808.10	(1) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to subheading 5808.10 from any other heading, except from heading 5001 through 5007, 5401 through 5406, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change of those fibers to heading 5808.10 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process.
5808.90	(1) For ornamental fabric trimmings, a change to subheading 5808.90 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process. (2) For nonfabric ornamental trimmings: (a) If the trimming is of continuous filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5408, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process; or (b) If the trimming is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process. (3) For tassels, pompons and similar articles: (a) If the good has been wholly assembled in a single country, territory, or insular possession, a change to subheading 5808.90 from any other heading; (b) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5604 through 5607, and provided that the change is the result of a spinning process; or (c) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process.
5809	A change to heading 5809 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5802, 5804, and 5806, and provided that the change is the result of a fabric-making process.

HTSUS	Tariff shift and/or other requirements
5810.10	The country of origin of goods of subheading 5810.10 is the single country, territory, or insular possession in which the embroidery was performed.
5810.91–5810.99	(1) For embroidered fabric, the country of origin is the country, territory, or insular possession in which the fabric was produced by a fabric-making process. (2) For embroidered badges, emblems, insignia, and the like, comprised of multiple components, the country of origin is the place of assembly, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (3) For embroidered badges, emblems, insignia, and the like, not comprised of multiple components, a change to subheading 5810.91 through 5810.99 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5903, 5907, 6001 through 6002, and provided that the change is the result of a fabric-making process.
5811	The country of origin of a good classifiable under heading 5811 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
5901–5903	A change to heading 5901 through 5903 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5904	(1) For goods that have been wholly assembled by means of a lamination process, a change to heading 5904 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) For all other goods, the country of origin of the good will be determined by application of § 102.21(c)(4) or, if the country of origin cannot be determined under that section, by application of § 102.21(c)(5).
5905	A change to heading 5905 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5906–5907	A change to heading 5906 through 5907 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5908	(1) Except for yarns, twine, cord, and braid, a change to heading 5908 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5802, 5806, 5808, and 6001 through 6002. (2) For yarns, twine, cord, and braid: (a) If the good is of continuous filaments, including strips, a change to heading 5908 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change to heading 5908 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5605 through 5607, and provided that the change is the result of a spinning process.
5909	A change to heading 5909 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5804, 5806, 5808, and 6001 through 6002, and provided that the good does not contain armor or accessories of nontextile material and provided that the change is the result of a fabric-making process; or A change to textile hosepiping with armor or accessories of nontextile material, of heading 5909, from any heading, including a change from another good of heading 5909, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5910	(1) For belts and belting of braid, rope, or cord: (a) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5910 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change of those fibers to heading 5910 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process. (2) For fabric belting and belts, not braids and not combined with nontextile components, whether or not reinforced with metal or other material, a change to heading 5910 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5808 through 5809, and 6001 through 6002, and provided the change is the result of a fabric-making process. (3) For fabric belts, including belts of braided materials, combined with nontextile components, whether or not reinforced with metal or other material, a change to heading 5910 from any heading, including a change from another good of heading 5910, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5911.10–5911.20	A change to subheading 5911.10 through 5911.20 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
5911.31–5911.32	(1) For goods not combined with nontextile components, a change to subheading 5911.31 through 5911.32 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6002, and provided that the change is the result of a fabric-making process. (2) For goods combined with nontextile components, a change to subheading 5911.31 through 5911.32 from any other heading, provided that the change is the result of the good being wholly assembled in single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
5911.40	A change to subheading 5911.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
5911.90	(1) For goods of yarn, rope, cord, or braid: (a) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to subheading 5911.90 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change of those fibers to subheading 5911.90 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process. (2) If the good is a fabric, a change to subheading 5911.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809, and 6001 through 6002, and provided that the change is the result of a fabric-making process. (3) If the good is a made up article other than a good of yarn, rope, cord, or braid, a change to subheading 5911.90 from any heading, including a change from another good of heading 5911, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6001–6002	A change to heading 6001 through 6002 from any heading outside that group, provided that the change is the result of a fabric-making process.
6101–6117	(1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6101 through 6117 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good is not knit to shape and does not consist of two or more component parts, a change to heading 6101 through 6117 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process. (3) If the good is knit to shape, a change to heading 6101 through 6117 from any heading outside that group, provided that the knit-to-shape components are knit in a single country, territory, or insular possession.
6201–6208	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6201 through 6208 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6201 through 6208 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6209.10.0000–6209.20.5035	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.10.0000 through 6209.20.5035 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 6209.10.0000 through 6209.20.5035 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6209.20.5040	The country of origin of a good classifiable in subheading 6209.20.5040 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6209.20.5045–6209.90.9000	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.20.5045 through 6209.90.9000 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 6209.20.5045 through 6209.90.9000 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6210–6212	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6210 through 6212 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6002, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6213–6214	The country of origin of a good classifiable under heading 6213 through 6214 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6215–6217	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6215 through 6217 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6215 through 6217 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.

HTSUS	Tariff shift and/or other requirements
6301–6306	The country of origin of a good classifiable under heading 6301 through 6306 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6307.10	The country of origin of a good classifiable under subheading 6307.10 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6307.20	A change to subheading 6307.20 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6307.90	The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6308	The country of origin of a good classifiable under heading 6308 is the country, territory, or insular possession in which the woven fabric component of the good was formed by a fabric-making process.
6309–6310	The country of origin of a good classifiable under heading 6309 through 6310 is the country, territory, or insular possession in which the good was last collected and packaged for shipment.
6405.20.60	A change to subheading 6405.20.60 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6406.10.77	(1) If the good consists of two or more components, a change to subheading 6406.10.77 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.10.77 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6406.10.90	(1) If the good consists of two or more components, a change to subheading 6406.10.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.10.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6406.99.15	(1) If the good consists of two or more components, a change to subheading 6406.99.15 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.99.15 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6501	(1) If the good consists of two or more components, a change to heading 6501 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6501 from any other heading, except from heading 5602, and provided that the change is the result of a fabric-making process.
6502	(1) If the good consists of two or more components, a change to heading 6502 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6502 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6503	(1) If the good consists of two or more components, a change to heading 6503 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6503 from any other heading, except from heading 5602, and provided that the change is the result of a fabric-making process.
6504	(1) If the good consists of two or more components, a change to heading 6504 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6504 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6505.90	(1) If the good consists of two or more components, a change to subheading 6505.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6505.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6601.10–6601.91	A change to subheading 6601.10 through 6601.91 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
7019.10.15	(1) If the good is of filaments, a change to subheading 7019.10.15 from any other heading, provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change to subheading 7019.10.15 from any other subheading, except from subheading 7019.10.30 through 7019.10.90 and 7019.31 through 7019.90, and provided that the change is the result of a spinning process.

HTSUS	Tariff shift and/or other requirements
7019.10.28	(1) If the good is of filaments, a change to subheading 7019.10.28 from any other heading, provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change to subheading 7019.10.28 from any other subheading, except from subheading 7019.10.30 through 7019.10.90 and 7019.31 through 7019.90, and provided that the change is the result of a spinning process.
7019.20	A change to subheading 7019.20 from any other heading, provided that the change is the result of a fabric-making process.
8708.21	(1) For seat belts not combined with nontextile components, a change to subheading 8708.21 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process. (2) For seat belts combined with nontextile components, a change to an assembled good of subheading 8708.21 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
8804	(1) If the good consists of two or more component parts, a change to an assembled good of heading 8804 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 8804 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5804, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9113.90.40	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 9113.90.40 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 9113.90.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5802, 5806, 5809, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9404.90	The country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
9502.91	A change to an assembled good of subheading 9502.91 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
9612.10.9010	A change to subheading 9612.10.9010 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5806, 5903, 5906 through 5907, and 6002, and provided that the change is the result of a fabric-making process.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

§ 178.2 Listing of OMB control numbers.

2. Section 178.2 is amended by adding to the table a new listing for § 10.25 to read as follows:

19 CFR Section	Description	OMB control No.
	* * * * *	
§ 10.25	Declaration by foreign assembler and endorsement by importer that articles were assembled in whole or in part from textile components cut to shape in the U.S.	1515–0207
	* * * * *	

George J. Weise,

Commissioner of Customs.

Approved: August 16, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–21905 Filed 9–1–95; 8:45 am]

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Tuesday
September 5, 1995

Part VI

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not Covered by Subpart H; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–5290–8]

RIN 2060–AE38

National Emission Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not Covered by Subpart H

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is rescinding subpart I of 40 CFR part 61 as it applies to nuclear power reactors, pursuant to section 112(d)(9) of the Clean Air Act Amendments of 1990. This section allows EPA to decline to regulate Nuclear Regulatory Commission (NRC) licensees if the Administrator determines by rule, and in consultation with the NRC, that the regulatory program established by the NRC pursuant to the Atomic Energy Act provides an ample margin of safety to protect the public health.

A proposed rule to rescind subpart I as it applies to nuclear power reactors was published on August 5, 1991. Based upon the record compiled in the subsequent rulemaking, EPA has concluded that the NRC regulatory program controlling air emissions of radionuclides from nuclear power reactors will assure that the resultant doses will consistently and predictably be below the levels which EPA has determined are necessary to provide an ample margin of safety to protect the public health.

EFFECTIVE DATE: This final rule is effective on September 5, 1995. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of the publication of this rule.

FOR FURTHER INFORMATION CONTACT: Fran Jonesi, Risk Assessment and Air Standards Branch, Criteria and Standards Division (6602J), Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, DC 20460, (202) 233–9300.

SUPPLEMENTARY INFORMATION:

Docket

The rulemaking record is contained in Docket No. A–94–61 (cross-referenced with A–79–11) and contains all information considered by EPA in determining the doses associated with radionuclide emissions from NRC-licensed nuclear power reactors. It also contains all comments received from the public during the comment period, and a document describing the Agency's responses to the comments received. This docket is available for public inspection and copying between 8 a.m. and 5 p.m. on weekdays. A fee may be charged for copying.

A single copy of a Background Information Document (BID) (EPA/520/1–89–006–1,2,5,7) containing information on airborne radionuclide emissions to the environment from nuclear power reactors has been included in the docket. Copies of the BID may also be obtained by writing to: Director, Criteria and Standards Division (6602J), Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, DC 20460.

A. Background

1. Regulatory History

On October 31, 1989, EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPS) under Section 112 of the Clean Air Act to control radionuclide emissions to the ambient air from a number of different source categories. 54 FR 51654 (December 15, 1989). Subpart I of 40 CFR part 61 covers two groups of facilities: (1) Facilities licensed and regulated by the Nuclear Regulatory Commission (NRC) and its individual Agreement States, and (2) federal facilities which are not licensed by the NRC and are not owned or operated by the Department of Energy. The first group is quite diverse, and includes facilities which have received a license to use or possess nuclear materials such as hospitals, medical research facilities, radiopharmaceutical manufacturers, laboratories and industrial facilities, as well as facilities involved in the uranium fuel cycle (the conversion of uranium ore to electric power) such as uranium mills (other than radon releases), fuel fabrication plants, and nuclear power reactors. It is a subset of the uranium fuel cycle facilities, nuclear power reactors, which is the subject of today's action. The second group consists of federal facilities such as naval nuclear facilities which are not licensed by the NRC and are not affected in any way by the proposals to rescind subpart I with respect to NRC licensees.

Subpart I limits radionuclide emissions to the ambient air to amounts which would not cause any member of the public to receive in any year an effective dose equivalent (ede) greater than 10 millirem, of which no more than 3 millirem ede may be caused by radioiodines.

When subpart I was originally promulgated in December 1989, EPA simultaneously granted reconsideration of subpart I based on information received late in the rulemaking on the subject of duplicative regulation by NRC and EPA of NRC-licensed facilities and on the potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and granted a 90-day stay of subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B). That stay expired on March 15, 1990. EPA subsequently extended the stay of the effective date of subpart I on several occasions pursuant to the authority provided by section 10(d) of the Administrative Procedure Act, 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (See 55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990). On July 26, 1991, EPA issued a final rule staying the effectiveness of subpart I of 40 CFR part 61 for NRC-licensed commercial nuclear power reactors pending completion of today's rulemaking. See 56 FR 37158 (September 26, 1991), and 40 CFR 61.109(b).

EPA also stayed subpart I for NRC and Agreement State licensees other than nuclear power reactors while EPA was collecting additional information necessary to make a determination under section 112(d)(9) of the 1990 Clean Air Act Amendments. See 56 FR 18735 (April 24, 1991), and 40 CFR 61.109(a). However, on September 25, 1992, the D.C. Court of Appeals issued a decision that EPA had exceeded its authority by staying subpart I while EPA was collecting information needed to make a determination under section 112(d)(9). *Natural Resources Defense Council* v. *Reilly,* 976 F.2d 36 (D.C. Cir. 1992). The stay for licensees other than nuclear power reactors expired before the *NRDC* decision could be implemented on November 15, 1992, and subpart I took effect for these licensees on November 16, 1992.

2. New Authority in the Clean Air Act Amendments

In November of 1990, Congress enacted amendments to the Clean Air Act. Section 112(d)(9) of the Clean Air Act Amendments allows EPA to decline to regulate NRC-licensed facilities if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the

regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

The legislative history of section 112(d)(9) indicates the manner in which Congress intended that EPA interpret the phrase ''an ample margin of safety to protect the public health'' when making the finding required by section 112(d)(9). The Conference Report indicates that the ''ample margin of safety'' the Administrator must find under section 112(d)(9) is the same ''ample margin of safety'' that governed the development of standards promulgated under section 112 prior to the 1990 amendments. H.R. Rep. 952, 101st Cong., 2d Sess. 339 (1990). The two-step process by which EPA identified an ''ample margin of safety'' was described in detail in a U.S. Court of Appeals decision, *NRDC* v. *EPA*, 824 F.2d 1146 (D.C.Cir 1987) (the Vinyl Chloride decision). The 1989 NESHAPs standard represents the Agency's application of the *Vinyl Cloride* decision and is consistent with the Agency's approach for regulating hazardous air pollutants under section 112 of the Clean Air Act.

3. Construction of Section 112(d)(9)

From the language of section 112(d)(9), it is apparent that where EPA has already specifically determined what level of emissions must be achieved to provide an ''ample margin of safety,'' that level is the benchmark by which EPA must evaluate the adequacy of the NRC program. In the present case, EPA specifically found when it promulgated 40 CFR part 61, subpart I, that an emission level that would result in a dose no greater than 10 mrem/year was necessary to provide the requisite ''ample margin of safety.'' 54 FR 51654 (December 15, 1989).

Section 112(d)(9) does not, however, require exact equivalence between the EPA and NRC programs applicable to a particular category of licensees before EPA may decline to regulate radionuclide emissions from that category. Rather, it requires that EPA conclude that implementation of the NRC program as a whole will achieve substantive protection of the public health equivalent to or better than that which would be achieved by enforcement of an EPA standard. Thus, if the NRC program as a whole will assure that emissions from all affected licensees remain below the EPA standard, the NRC program may be deemed to provide an ample margin of safety, regardless of whether this results from enforcement by NRC of a single numerical standard.

In deciding whether EPA may decline to regulate a particular category or subcategory of NRC or Agreement State licensees, EPA construes section 112(d)(9) as requiring that EPA determine: (1) That emissions from NRC licensees (or Agreement State licensees when authority to regulate the licensees has been relinquished by NRC) in that category or subcategory will be consistently and predictably at or below a level resulting in a dose of 10 mrem/year, and (2) that NRC (or the Agreement States) can and will require any individual licensee in that category or subcategory with emissions that cause a dose exceeding 10 mrem/year to reduce the emissions sufficiently that the dose will not exceed 10 mrem/year.

4. Reconsideration of Subpart I

After the adoption of section 112(d)(9), EPA reviewed the information available to the Agency, including the information provided during the Agency's reconsideration of subpart I, to decide whether it could determine, for particular categories of licensees, that the NRC regulatory program protects public health with an ample margin of safety. EPA's initial analysis focused on two general issues: (1) Whether the NRC regulatory program in practice results in sufficiently low doses to protect the public health with an ample margin of safety; and (2) whether the NRC program is sufficiently comprehensive and thorough and administered in a manner which will continue to protect public health in the future.

a. Nuclear Power Reactors

During its initial assessment of the NRC program under section 112(d)(9), EPA concluded that the Agency had sufficient information concerning NRC regulation of nuclear power reactors to enable EPA to make the requisite finding concerning the adequacy of the NRC program. For nuclear power reactors, EPA made a preliminary determination that the NRC regulatory program protects public health with an ample margin of safety. On March 13, 1991, EPA issued an Advanced Notice of Proposed Rulemaking announcing the Agency's intention to enter into a rulemaking to rescind subpart I as applied to nuclear power reactors. (56 FR 10524). This was followed on August 5, 1991 by a Proposed Rule to rescind subpart I with respect to nuclear power reactors. (56 FR 37196).

b. Licensees other than Nuclear Power Reactors

After reviewing the available information for licensees other than nuclear power reactors, EPA concluded that it lacked sufficient information concerning actual emissions from these facilities to make the substantive determination contemplated by section 112(d)(9). Accordingly, EPA undertook an extensive study in order to determine the doses resulting from radionuclide emissions at these facilities. EPA surveyed a randomly selected subset of all licensed facilities, as well as a group of ''targeted'' facilities chosen because of an expectation that they would have higher emissions.

EPA evaluated the results of its study of NRC and Agreement State licensees other than nuclear power reactors using the COMPLY computer program. None of the facilities evaluated appeared to cause a dose exceeding the 10 mrem/year level established by subpart I. When the results of the survey were statistically extrapolated to the entire population of NRC and Agreement State licensees, EPA concluded that virtually all of the facilities would cause doses to members of the public which are below 10 mrem/year.

After reviewing the current NRC regulatory program, and considering the likely effect of additional measures which NRC had agreed to adopt pursuant to a Memorandum of Understanding, EPA proposed to rescind subpart I for NRC and Agreement State licensees other than nuclear power reactors on December 1, 1992. See 57 FR 56877 (December 1, 1992). However, EPA subsequently identified several concerns regarding the Agency's ability to make the substantive finding for these licensees required by section 112(d)(9). In particular, EPA was concerned that the present NRC program would not assure that radionuclide emissions from each such licensee would cause a dose no greater than 10 mrem/year, and that NRC or the individual Agreement State might not be able to require a particular licensee exceeding 10 mrem/year to reduce its emissions.

EPA initiated consultations with the NRC intended to resolve these concerns, and EPA and NRC have recently agreed on proposals which, when fully implemented, should provide a satisfactory basis for rescission of subpart I for NRC and Agreement State licensees other than nuclear power reactors. In a forthcoming notice, EPA will reaffirm its proposal to rescind subpart I for NRC and Agreement State licensees other than nuclear power

reactors, describe the revisions to the NRC program which NRC has proposed, and provide an additional opportunity for comment concerning the sufficiency of the proposed revisions to support the finding required by section 112(d)(9).

B. Assessment of the NRC Program Controlling Air Emissions of Radionuclides From Nuclear Power Reactors

In order to determine whether the NRC regulatory program controlling air emissions from NRC-licensed commercial nuclear power reactors provides an ample margin of safety as required under section 112(d)(9), EPA has evaluated the doses which result from such emissions as well as the specific elements of the NRC program which operate to control or limit such emissions. In performing this analysis, EPA has focussed on the following questions:

(1) Do current radionuclide emissions during routine operations of nuclear power reactors licensed by NRC result in doses no greater than 10 mrem/year?

(2) Will the NRC regulatory program assure that routine radionuclide emissions from licensed nuclear power reactors in the future result in doses which are consistently and predictably no greater than 10 mrem/year?

(3) If at some point an individual nuclear power reactor has routine radionuclide emissions resulting in a dose greater than 10 mrem/year, will NRC require that the facility in question take actions which will reduce emissions to a level resulting in a dose no greater than 10 mrem/year?

1. Doses Resulting From Radionuclide Emissions From Nuclear Power Reactors

Of the 100 light-water-cooled commercial nuclear power reactors operating in the United States at the time that EPA's analysis was conducted, 63 are pressurized water reactors (PWRs) and 37 are boiling water reactors (BWRs). These facilities are licensed by the NRC and involve operations with the potential for large releases of radionuclides.

During the rulemaking that resulted in the promulgation of the final rule in 1989, EPA performed exposure and risk assessments for radionuclide releases from Uranium Fuel Cycle (UFC) facilities, a category which includes nuclear power reactors. The results of these analyses showed that the most exposed individual receives a lifetime dose associated with a risk of fatal cancer of 1.5×10^{-4}. Almost all individuals in the exposed population received a lifetime risk of less than 1×10^{-6}. These estimated risks are for UFC facilities as a whole. For the models used for PWRs and BWRs, the values were much lower. The risk to the most exposed individuals were 3×10^{-6} and 5×10^{-6} for the model PWR and BWR, respectively. The predicted incidences of fatal cancers per year in the populations surrounding these model plants were 7×10^{-4} and 1×10^{-3} for the PWR and BWR, respectively. EPA determined that baseline emissions from the UFC category were at a safe level, i.e., protected the maximally exposed individual to a lifetime risk level of approximately one in ten thousand.

EPA independently calculated doses for every site with one or more operating nuclear power reactor using 1988 emissions data, the most recent year for which a complete set of data was available at that time. If a plant had below normal emissions in 1988, emissions data for a more typical year were used in the analysis. Site-specific data were obtained to the maximum extent practical and used as input to the CAP–88 computer codes. In all cases, the calculated doses to the maximally exposed individual did not exceed 1.0 mrem/year ede. This is equivalent to a maximum lifetime individual risk of approximately 3 in 100,000. Thus, the NRC regulatory program, for the years examined, resulted in doses which are at least 10 times lower than the 10 mrem/year ede standard established by subpart I.

EPA also compared the 1988 data with historical data, dating back to 1975, to determine if the 1988 data were representative of long term trends in population and individual doses. Although the populations around the reactor facilities and the facility capacity factors have increased over the last fifteen years, EPA determined that the average annual collective population doses had steadily declined.

During the present rulemaking, EPA conducted a review of the nuclear power reactor segment of the uranium fuel cycle and determined that the individual doses associated with radionuclide emissions from nuclear power reactors are even lower than were previously estimated. This latest analysis estimates that the most exposed individuals receive doses from nuclear power plants of less than 1.0 mrem/year ede from all radionuclides and a dose of less than 0.01 mrem/year ede from radioiodines. The highest estimated dose in these more recent analyses remains at least an order of magnitude below the 10 mrem/year ede standard established by subpart I.

Thus, the evidence clearly demonstrates that current radionuclide emissions from nuclear power reactors licensed by NRC result in doses no greater than 10 mrem/year. The remaining questions considered by EPA require assessment of the elements of the NRC program which control and limit air emissions from nuclear power reactors. An assessment of the NRC regulatory framework which applies to licensed nuclear power reactors follows.

2. The NRC Regulatory Program for Nuclear Power Reactors

Section 2 of the Atomic Energy Act of 1954 (AEA), as amended, 42 USC 2012, emphasizes that an important national goal in regulating utilization facilities, which would include all nuclear power reactors, is protecting the ''health and safety of the public.'' Pursuant to that mandate, NRC has an extensive regulatory program covering all facets of reactor design, construction, and operation, including regulations specifically addressing the release, airborne and otherwise, of radionuclides.

a. Regulations Governing Radionuclide Emissions

There are three regulations which control routine Radionuclide emissions from commercial nuclear power plants: (1) 10 CFR part 50, Appendix I, ''Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion 'As Low As is Reasonably Achievable' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents''; (2) 40 CFR part 190, ''Environmental Radiation Protection Standards for Nuclear Power Operations''; and (3) 10 CFR part 20, ''Standards for Protection Against Radiation.''

10 CFR part 50, Appendix I, provides numerical guides for design objectives and limiting conditions for operation to assist licensees in meeting the requirements of §§ 50.34a and 50.36a that radioactive material in effluents released to unrestricted areas be kept as low as is reasonably achievable (ALARA). The licensee satisfies the design objectives, in part, by demonstrating that the gaseous radionuclide releases to the atmosphere from each reactor on site will not result in an estimated average annual air dose in excess of 10 millirad (absorbed dose) for gamma exposure and 20 millirad (absorbed dose) for beta exposure. These limits are air doses, resulting from exposure to noble gases in unrestricted areas, which could be occupied by an individual. Lower radionuclide release rates may be required to satisfy the design objectives if it appears that the releases are likely to result in an

estimated annual external dose from gaseous effluents, to any individual in an unrestricted area, in excess of 5 mrem/year. Alternatively, higher release rates may be acceptable if the applicant can provide reasonable assurance that the external dose to any individual in an unrestricted area, from noble gases, will not exceed 5 mrem/year to the whole body. [For noble gases, the whole body dose is the same as the effective dose equivalent.] The applicant must also demonstrate that the calculated annual total quantity of all radioiodines and radioactive particulates released to the atmosphere from each reactor will not cause exposures to any individual in unrestricted areas from all pathways in excess of 15 mrem/year to any organ. A dose of 15 mrem/year to the thyroid from radioiodines will result in an effective dose equivalent of less than 0.5 mrem/year, as the organ weighting factor for calculating the ede for the thyroid is 0.03. Thus, 10 CFR part 50, Appendix I, limits the total effective dose equivalent to approximately 6 mrem/year because essentially all of the internal emitters are radioiodines.

The limiting conditions of operation (LCOs) set forth in Appendix I are used to develop technical specifications which are included in the facility's license. The technical specifications assure that radionuclide releases during operations are consistent with the design objectives to maintain off-site doses ALARA. The technical specifications are enforceable requirements under NRC's enforcement policy (10 CFR part 2, Appendix C).

40 CFR part 190, ''Environmental Radiation Protection Standards for Nuclear Power Operations,'' requires uranium fuel cycle operations to be conducted in such a manner that there is reasonable assurance that the annual radiation dose equivalent to any member of the public from all uranium fuel cycle sources does not exceed 25 mrem to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ. The standard applies to gaseous and liquid effluent pathways and direct radiation from these facilities.

In 1981, the NRC amended its regulations to incorporate these standards. Sections 20.105(c) and 20.106(g) specifically required licensees engaged in uranium fuel cycle operations to comply with the 40 CFR part 190 dose limits.

10 CFR part 20, ''Standards for Protection Against Radiation,'' consists of standards for protection against radiation hazards arising out of activities conducted under licenses issued pursuant to the AEA of 1954, as amended. The portions of part 20 that applied to radionuclide emissions from licensed facilities were contained in § 20.105, which set permissible levels of radiation in unrestricted areas, and § 20.106, which established limits on radioactivity in effluents to unrestricted areas. On May 21, 1991 (56 FR 23360), major revisions to part 20 were published by the NRC, and compliance with the revisions became mandatory for all licensees on January 1, 1994. The revised rule implements 1987 Presidential guidance on occupational radiation protection and the recommendations of scientific organizations to establish risk-based limits and a system of dose limitation in accordance with the guidance published by the International Commission on Radiation Protection. In adopting the risk-based methodology, the NRC established an explicit dose limit for members of the public of 2 mrem/hr not to exceed 100 mrem/year ede, and extended an explicit ALARA requirement to all licensees. Doses resulting from direct radiation and radionuclides released in gaseous and liquid effluents must be evaluated in determining compliance with the numerical limits. The revised part 20 also requires licensees to comply with the standards set forth in 40 CFR part 190 for the uranium fuel cycle (10 CFR 20.1301(d)).

In addition to these numerical standards, part 20 also requires that each licensee make every reasonable effort to maintain radiation exposures, and releases of radioactive material in effluents to unrestricted areas, to levels which are ALARA (10 CFR 20.1101(b)).

The principal radionuclides routinely released in the gaseous effluents from commercial light-water reactors are noble gases and radioiodines. The whole body dose from noble gas emissions per reactor is limited by the 5 mrem/year limit of Appendix I. The organ doses from radioiodines and particulates are limited to 15 mrem/year. For radioiodines, where the thyroid gland is the critical organ, 15 mrem/yr effective dose equivalent equates to 0.45 mrem/year. Thus, the total ede allowed under Appendix I is even less than 6 mrem/year. The guidelines set forth in Appendix I and the standards set forth in 40 CFR part 190 together establish a regulatory framework that provides a high level of assurance that the routine emissions from commercial light water reactors will not result in exposures in excess of the EPA 10 mrem/year ede standard.

b. Monitoring

Compliance with 10 CFR part 50, Appendix I, and with 40 CFR part 190 is demonstrated through the establishment of Limiting Conditions of Operation (LCOs) and Radiological Effluent Technical Specifications (RETS) for each nuclear power reactor in accordance with 10 CFR 50.36a. The LCOs and associated RETS require that if the quantity of radioactive material actually released in effluents to unrestricted areas in any calendar quarter results in radiation exposure, calculated on the same basis as the design objectives, exceeding one half the annual design objectives, the licensee is required to investigate the cause of the release, define and initiate corrective actions to prevent a recurrence, and report these actions to the NRC within 30 days from the end of the quarter in which the release occurred.

The LCOs and RETS also require licensees to initiate effluent and environmental monitoring programs to provide (1) data on the types and quantities of radionuclides released, (2) the levels of radiation and radioactive materials in the environment, and (3) changes in land use and demography in the vicinity of the site that pertain to compliance with the LCOs. If the monitoring data reveal that the relationship between the quantities of radioactive materials released and the doses to individuals in unrestricted areas is significantly different than that assumed in the calculations used to assess compliance with the design objectives, the NRC may require a modification of the RETS.

In order to provide assistance to licensees in complying with the LCOS and preparing their RETS, the NRC has issued the following guidance: NUREG–0472 and –0473, ''Standard Radiological Effluent Technical Specifications for PWRs (and BWRs),'' U.S. NRC, January 1983; NUREG–0133, ''Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants,'' U.S. NRC, October 1978; NUREG–1301 and NUREG–1302, ''Offsite Dose Calculation Manual Guidance: Standard Radiological Effluent Controls for Pressurized Water Reactors (and Boiling Water Reactors),'' U.S. NRC, April 1991; and U.S. NRC Regulatory Guide 1.21, ''Measuring, Evaluating, and Reporting Radioactivity in Solid Waste and Releases of Radioactive Material in Liquid and Gaseous Effluents from Light-Water-Cooled Nuclear Power Plants''.

These documents provide highly detailed standard RETS and procedures for implementing them. Detailed guidance is provided in the areas of effluent monitoring instrumentation; specific equations, assumptions and

methodologies addressing short- and long-term radioactive releases; and the use of gaseous radwaste treatment systems.

c. Inspections

To ensure that licensees are meeting all regulatory and license-specific effluent and environmental protection requirements, each facility receives approximately 2 radiation protection inspections per year by regional NRC inspectors. Along with the plants' reporting requirements, the inspections determine the degree to which each plant is in compliance with its license and technical specifications, including its RETS. If problem areas are identified, follow-up inspections are scheduled in order to ensure that deficiencies are corrected. If a facility appears to have persistent problems in particular areas, the facility is subjected to inspections on a more frequent basis.

The periodic inspections of the RETS include a review of records and procedures, interviews with plant personnel, and audits of the licensee's effluent and environmental measurements program. The results of these analyses not only indicate the level of radioactive material in the effluent, but also indicate the degree of accuracy and precision of the facility's own effluent monitoring equipment.

Each operating commercial power plant has at least one full time NRC Senior Resident Inspector who provides continuous health and safety oversight of plant operations. Sites with multiple reactors have at least one Resident Inspector per reactor. If problem areas arise pertaining to compliance with the RETS, the Resident Inspector may request special inspections and/or audits of related plant operations on a more frequent basis.

All inspections performed by either on-site Resident Inspectors or inspectors from the NRC Regional offices or NRC Headquarters are fully documented. These reports are made available to the public in the NRC Public Document Rooms located in the host community, the regional offices, and in Washington, DC. The reports are filed in the separate docket established for each reactor site. Reportable licensee events include exceeding effluent release rates, worker overexposures, procedure violations, and accidents. If detailed event information is desired, it can be obtained from the LER filed in the individual docket.

C. Summary of Major Comments and EPA Responses

This section contains a brief description of the major comments received relating to the Agency's rescission of 40 CFR part 61, subpart I for nuclear power reactors. During the comment period for other rulemakings, such as the proposed stays for subpart I, the Agency received additional comments on the specific issue of whether to rescind subpart I for nuclear power reactors. EPA stated at the time that such substantive comments would be addressed at the appropriate time following a proposed rule to rescind subpart I. These comments are now extensively discussed in the Response to Comments Document which has been placed in the docket for public review. The Response to Comment document also addresses those comments received during the 60-day comment period for the subject rulemaking as well as comments presented at the September 1991 public hearings held in Washington, DC and in Seattle, Washington.

A major concern expressed by commenters relates to the regulatory authority of the states and how action such as this rescission, taken pursuant to section 112(d)(9), might affect the states' authority under the CAA to establish radionuclide air emission standards. This issue was recently addressed in a July 2, 1993 letter from Robert M. Bernero, Director of the Office of Nuclear Material Safety and Safeguards to Margo Oge, Director of EPA's Office of Radiation and Indoor Air. Mr. Bernero states that the NRC's Office of the General Counsel has examined the CAA, and relevant portions of the legislative history, ''and has concluded that the passage of the 1990 CAA amendments had no effect on the preexisting power of the States under section 116 to establish radionuclide air emission standards, regardless of any action EPA might take pursuant to section 112(d)(9).'' EPA concurs with NRC's construction. In addition, this issue was extensively discussed by the Senate during floor debate for the Clean Air Act Amendments of 1990. Passage of the ''Simpson amendment'' failed on the first vote due to similar concern that the amendment somehow affected states' rights and required resolution before the amendment ultimately succeeded in passage. As explained by Senator Burdick, the bill does not affect existing states' rights. ''Section 112(d)(9) provides for State authority for radionuclide emissions in the same manner and to the same extent as does existing section 116'' of the Clean Air Act, which contains the provision that ''nothing in this Act shall preclude or deny the right of any state or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of air pollutants * * *'' April 3, 1990 Congressional Record-page S3798.

Another significant issue which arose during the comment period concerned whether the performance and testing requirements imposed on licensees to assure that the regulatory requirements for stack emissions monitoring and off-site air monitoring are being met. After carefully reviewing NRC's regulatory requirements for airborne effluent and environmental monitoring, the Standard Review Plan and Regulatory Guides, and the inspection procedures that the NRC uses to assure that licensees have installed and are maintaining monitoring systems in conformance with the regulatory requirements, EPA concluded that NRC's program assured that these factors were being adequately addressed and does not preclude EPA's rescission of Subpart I.

D. Final Action

This final rule rescinding subpart I for commercial nuclear power reactors licensed by the NRC is the culmination of the Agency's reconsideration of Subpart I for this category of licensees. EPA has determined that current radionuclide emissions from NRC-licensed nuclear power reactors during routine operations are consistently well below levels which would result in doses exceeding 10 mrem/year ede. Moreover, EPA has comprehensively evaluated the individual elements of the NRC regulatory program which control radionuclide emissions from these facilities. Based on this evaluation, EPA has determined that radionuclide emissions during routine operations of NRC-licensed nuclear power reactors are expected to remain well below levels which would result in a dose exceeding 10 mrem/year. EPA has further determined that NRC can and will require any licensed nuclear power reactor which has radionuclide emissions resulting in a dose exceeding 10 mrem/year to take specific actions which will reduce emissions to a level which results in a dose below 10 mrem/year. Based on these determinations, EPA finds under section 112(d)(9) that the NRC regulatory program for licensed commercial nuclear power reactors provides an ample margin of safety to protect public health.

This finding with respect to licensed commercial nuclear power reactors does not apply to other NRC or Agreement State licensees. Although EPA anticipates that the revisions to the NRC program for licensees other than nuclear power reactors proposed by NRC as part

of recent consultations with EPA will be sufficient to support the finding required by section 112(d)(9) for these licensees as well, EPA does not intend to conclude the rulemaking concerning rescission of Subpart I for these other licensees until NRC has taken final action concerning its proposals.

EPA is prepared to proceed with rescission for nuclear power reactors immediately due to several factors which are unique to this category of facilities. NRC has established an ALARA guideline for nuclear power reactors which equates to approximately 6 mrem/year ede, and the individual facilities have consistently committed to achieving this level. Measured emissions from nuclear power reactors have also been consistently well below this target level.

In addition, NRC-licensed nuclear power reactors are a relatively small, homogeneous and well-characterized group of facilities. EPA knows enough about the magnitude of routine emissions from nuclear power reactors, the technology utilized to limit such emissions, and the administration of the NRC program to control such emissions to conclude that NRC will not accept or countenance ALARA emissions from these facilities which would result in a dose exceeding 10 mrem/year. NRC itself maintains direct oversight of licensed nuclear power reactors. In contrast, NRC licensees other than nuclear power reactors are a heterogeneous category and consists of a variety of different types of facilities. Based on the available database in EPA's 1992 BID, about 6,000 licensees are administered by NRC and about 12,000 licensees are administered by the NRC Agreement States.

In determining whether the NRC regulatory program for a given category of licensees provides an ample margin of safety to protect the public health, EPA need not establish exact equivalence between the EPA regulatory program under the Clean Air Act and the NRC regulatory program. Instead, EPA has examined the enforceable elements in the NRC program to determine whether they will assure an equivalent degree of protection for public health. EPA is confident that the NRC regulatory program for nuclear power reactors provides protection as stringent as subpart I, and thereby protects public health with an ample margin of safety. Based on this conclusion, EPA is today rescinding 40 CFR part 61, subpart I, as it applies to NRC-licensed commercial nuclear power reactors.

Today's action is based upon the Agency's determinations concerning present emissions from licensed nuclear power reactors, and on the Agency's evaluation of the elements of the current NRC regulatory program. If the NRC program were to change in the future in a manner which permitted radionuclide emissions from routine operations of nuclear power reactors to cause doses exceeding 10 mrem/year, EPA would consider repromulgating subpart I for such licensees at that time.

D. Judicial Review

Any petition for judicial review of this final rule must be filed in the United States Court of Appeals for the District of Columbia within 60 days from the date this rule is published in the **Federal Register**. Only an objection to the rule which was raised with reasonable specificity during the period for public comment (including public hearings) may be raised as part of any petition for judicial review.

E. Miscellaneous

1. Paperwork Reduction Act

The reporting and record keeping requirements rescinded in today's notice were approved by OMB as part of the Information Collection Request for the Radionuclide NESHAP, OMB control number 2060–0191. The EPA has submitted an Information Correction Worksheet to OMB to delete the burden associated with these requirements from that clearance.

2. Executive Order 12866

Under Executive Order 12866, (58 FR 57735, October 4, 1993) the Agency must determine whether this regulation, if promulgated, 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.

This action will not result in an annual effect on the economy of $100 million or another adverse economic impact, does not create a serious inconsistency or interfere with another agency's action, and does not materially alter the budgetary impacts of entitlements, grants, user fees, etc. However, EPA has concluded that this action may be construed as raising novel legal or policy issues. Accordingly, EPA has submitted this action to OMB and has obtained the requisite approval under the terms of Executive Order 12866.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an ''initial regulatory flexibility analysis'' in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The ''initial regulatory flexibility analysis'' describes the effect of the proposed rule on small business entities. However, section 605(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant impact on a substantial number of small entities.

It was found in the 1989 rule for 40 CFR part 61, subpart I, that there was no significant impact on small business entities. There has been no change in this finding. Because the changes ease the regulatory burdens associated with provisions of the existing final rule, EPA believes that this rule will have no adverse effect on small businesses. For the preceding reason, I certify that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Radionuclides, Vinyl Chloride.

Dated: August 28, 1995.

Carol M. Browner,

Administrator.

Part 61 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.100 is revised to read as follows:

§ 61.100 Applicability.

The provisions of this subpart apply to facilities other than nuclear power reactors which are licensed by the Nuclear Regulatory Commission. This subpart also applies to facilities owned or operated by any Federal agency other than the Department of Energy, except that this subpart does not apply to disposal at facilities regulated under 40 CFR part 191, subpart B, or to any uranium mill tailings pile after it has been disposed of under 40 CFR part 192, or to low energy accelerators, or to any NRC-licensee that possesses and uses radionuclides only in the form of sealed sources.

§ 61.107 [Amended]

3. Section 61.107 is amended by removing paragraph (c)(1) and by redesignating paragraphs (c)(2) and (3) as (c)(1) and (2).

§ 61.109 [Removed]

4. Section 61.109 is removed.

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

45647–46016.....1
46017–46212.....5

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

5 CFR

304.....45647
353.....45670
870.....45670
890.....45670
1320.....45776, 46148

7 CFR

271.....45990
272.....45990
273.....45990
945.....46017

8 CFR

329.....45658

12 CFR

3.....46170
208.....46170
225.....46170
325.....46170

14 CFR

399.....46018

Proposed Rules:

39.....45683

15 CFR

275.....45659

16 CFR

600.....45659

19 CFR

10.....46188
12.....46188
102.....46188
178.....46188

21 CFR

Proposed Rules:

862.....45685
866.....45685
868.....45685
870.....45685
872.....45685
874.....45685
876.....45685
878.....45685
880.....45685
882.....45685
884.....45685
886.....45685
888.....45685
890.....45685
892.....45685

24 CFR

882.....45661
887.....45661
982.....45661
983.....45661

25 CFR

Proposed Rules:

63.....45982

26 CFR

1.....45661

28 CFR

0.....46018

32 CFR

92.....46019

33 CFR

100.....45668
110.....45776
165 (2 documents) 45669, 45670

Proposed Rules:

117.....46069

34 CFR

Proposed Rules:

75.....46004

40 CFR

9.....45948
52 .....46020, 46021, 46024, 46025, 46029
61.....46206
63.....45948
70.....45671

Proposed Rules:

52.....46070, 46071
70.....45685, 46072
372.....46076

42 CFR

412.....45778
413.....45778
417.....45673
424.....45778
485.....45778
489.....45778

44 CFR

64.....46030, 46037
65 .....46038, 46040, 46042, 46043
67.....46044

Proposed Rules:

67.....46079, 46085

46 CFR

552.....46047

Proposed Rules:

40.....46087
154.....46087

47 CFR

73.....46063

48 CFR

2401 46152
2402 46152
2404 46152
2405 46152
2406 46152
2413 46152
2415 46152
2416 46152
2419 46152
2426 46152
2428 46152
2429 46152
2432 46152
2437 46152
2452 46152
2453 46152

49 CFR

571 46064

50 CFR

20 46012
649 45682
672 46067

Proposed Rules:

10 46087
13 46087
17 46087
625 46105
649 45690
650 45690
651 45691

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Title	Stock Number	Price	Revision Date
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3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
4	(869–026–00003–4)	5.50	Jan. 1, 1995
5 Parts:			
1–699	(869–026–00004–2)	23.00	Jan. 1, 1995
700–1199	(869–026–00005–1)	20.00	Jan. 1, 1995
1200–End, 6 (6 Reserved)	(869–026–00006–9)	23.00	Jan. 1, 1995
7 Parts:			
0–26	(869–026–00007–7)	21.00	Jan. 1, 1995
27–45	(869–026–00008–5)	14.00	Jan. 1, 1995
46–51	(869–026–00009–3)	21.00	Jan. 1, 1995
52	(869–026–00010–7)	30.00	Jan. 1, 1995
53–209	(869–026–00011–5)	25.00	Jan. 1, 1995
210–299	(869–026–00012–3)	34.00	Jan. 1, 1995
300–399	(869–026–00013–1)	16.00	Jan. 1, 1995
400–699	(869–026–00014–0)	21.00	Jan. 1, 1995
700–899	(869–026–00015–8)	23.00	Jan. 1, 1995
900–999	(869–026–00016–6)	32.00	Jan. 1, 1995
1000–1059	(869–026–00017–4)	23.00	Jan. 1, 1995
1060–1119	(869–026–00018–2)	15.00	Jan. 1, 1995
1120–1199	(869–026–00019–1)	12.00	Jan. 1, 1995
1200–1499	(869–026–00020–4)	32.00	Jan. 1, 1995
1500–1899	(869–026–00021–2)	35.00	Jan. 1, 1995
1900–1939	(869–026–00022–1)	16.00	Jan. 1, 1995
1940–1949	(869–026–00023–9)	30.00	Jan. 1, 1995
1950–1999	(869–026–00024–7)	40.00	Jan. 1, 1995
2000–End	(869–026–00025–5)	14.00	Jan. 1, 1995
8	(869–026–00026–3)	23.00	Jan. 1, 1995
9 Parts:			
1–199	(869–026–00027–1)	30.00	Jan. 1, 1995
200–End	(869–026–00028–0)	23.00	Jan. 1, 1995
10 Parts:			
0–50	(869–026–00029–8)	30.00	Jan. 1, 1995
51–199	(869–026–00030–1)	23.00	Jan. 1, 1995
200–399	(869–026–00031–0)	15.00	[6] Jan. 1, 1993
400–499	(869–026–00032–8)	21.00	Jan. 1, 1995
500–End	(869–026–00033–6)	39.00	Jan. 1, 1995
11	(869–026–00034–4)	14.00	Jan. 1, 1995
12 Parts:			
1–199	(869–026–00035–2)	12.00	Jan. 1, 1995
200–219	(869–026–00036–1)	16.00	Jan. 1, 1995
220–299	(869–026–00037–9)	28.00	Jan. 1, 1995
300–499	(869–026–00038–7)	23.00	Jan. 1, 1995
500–599	(869–026–00039–5)	19.00	Jan. 1, 1995
600–End	(869–026–00040–9)	35.00	Jan. 1, 1995
13	(869–026–00041–7)	32.00	Jan. 1, 1995
14 Parts:			
1–59	(869–026–00042–5)	33.00	Jan. 1, 1995
60–139	(869–026–00043–3)	27.00	Jan. 1, 1995
140–199	(869–026–00044–1)	13.00	Jan. 1, 1995
200–1199	(869–026–00045–0)	23.00	Jan. 1, 1995
1200–End	(869–026–00046–8)	16.00	Jan. 1, 1995
15 Parts:			
0–299	(869–026–00047–6)	15.00	Jan. 1, 1995
300–799	(869–026–00048–4)	26.00	Jan. 1, 1995
800–End	(869–026–00049–2)	21.00	Jan. 1, 1995
16 Parts:			
0–149	(869–026–00050–6)	7.00	Jan. 1, 1995
150–999	(869–026–00051–4)	19.00	Jan. 1, 1995
1000–End	(869–026–00052–2)	25.00	Jan. 1, 1995
17 Parts:			
1–199	(869–026–00054–9)	20.00	Apr. 1, 1995
200–239	(869–026–00055–7)	24.00	Apr. 1, 1995
240–End	(869–026–00056–5)	30.00	Apr. 1, 1995
18 Parts:			
1–149	(869–026–00057–3)	16.00	Apr. 1, 1995
150–279	(869–026–00058–1)	13.00	Apr. 1, 1995
280–399	(869–026–00059–0)	13.00	Apr. 1, 1995
400–End	(869–026–00060–3)	11.00	Apr. 1, 1995
19 Parts:			
1–140	(869–026–00061–1)	25.00	April 1, 1995
141–199	(869–026–00062–0)	21.00	[9] Apr. 1, 1995
200–End	(869–026–00063–8)	12.00	Apr. 1, 1995
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
500–End	(869–026–00066–2)	34.00	Apr. 1, 1995
21 Parts:			
1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–026–00068–9)	21.00	Apr. 1, 1995
170–199	(869–026–00068–7)	22.00	Apr. 1, 1995
200–299	(869–026–00070–1)	7.00	Apr. 1, 1995
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–026–00073–5)	9.50	Apr. 1, 1995
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–026–00079–4)	40.00	Apr. 1, 1995
200–219	(869–026–00080–8)	19.00	Apr. 1, 1995
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1–1.60	(869–026–00087–5)	21.00	Apr. 1, 1995
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
§§ 1.301–1.400	(869–026–00090–5)	17.00	Apr. 1, 1995
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
§§ 1.441-1.500	(869-026-00092-1)	22.00	Apr. 1, 1995
§§ 1.501–1.640	(869–026–00093–0)	21.00	Apr. 1, 1995
§§ 1.641–1.850	(869–026–00094–8)	25.00	Apr. 1, 1995
§§ 1.851–1.907	(869–026–00095–6)	26.00	Apr. 1, 1995
§§ 1.908–1.1000	(869–026–00096–4)	27.00	Apr. 1, 1995
§§ 1.1001–1.1400	(869–026–00097–2)	25.00	Apr. 1, 1995
§§ 1.1401–End	(869–026–00098–1)	33.00	Apr. 1, 1995
2–29	(869–026–00099–9)	25.00	Apr. 1, 1995
30–39	(869–026–00100–6)	18.00	Apr. 1, 1995
40–49	(869–026–000101–4)	14.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
50–299	(869–026–00102–2)	14.00	Apr. 1, 1995
300–499	(869–026–00103–1)	24.00	Apr. 1, 1995
500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990
600–End	(869–026–00105–7)	8.00	Apr. 1, 1995
27 Parts:			
1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[8] Apr. 1, 1994
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
*43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0–99	(869–022–00107–8)	21.00	July 1, 1994
100–499	(869–022–00108–6)	9.50	July 1, 1994
500–899	(869–022–00109–4)	35.00	July 1, 1994
*900–1899	(869–026–00113–8)	17.00	July 1, 1995
1900–1910 (§§ 1901.1 to 1910.999)	(869–022–00111–6)	33.00	July 1, 1994
1910 (§§ 1910.1000 to end)	(869–022–00112–4)	21.00	July 1, 1994
1911–1925	(869–022–00113–2)	26.00	July 1, 1994
1926	(869–022–00114–1)	33.00	July 1, 1994
1927–End	(869–022–00115–9)	36.00	July 1, 1994
30 Parts:			
1–199	(869–022–00116–7)	27.00	July 1, 1994
200–699	(869–022–00117–5)	19.00	July 1, 1994
700–End	(869–022–00118–3)	27.00	July 1, 1994
31 Parts:			
0–199	(869–022–00119–1)	18.00	July 1, 1994
200–End	(869–022–00120–5)	30.00	July 1, 1994
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–022–00121–3)	31.00	July 1, 1994
191–399	(869–022–00122–1)	36.00	July 1, 1994
400–629	(869–022–00123–0)	26.00	July 1, 1994
630–699	(869–026–00127–8)	14.00	[5] July 1, 1991
700–799	(869–022–00125–6)	21.00	July 1, 1994
800–End	(869–022–00126–4)	22.00	July 1, 1994
33 Parts:			
1–124	(869–022–00127–2)	20.00	July 1, 1994
125–199	(869–022–00128–1)	26.00	July 1, 1994
200–End	(869–022–00129–9)	24.00	July 1, 1994
34 Parts:			
1–299	(869–022–00130–2)	28.00	July 1, 1994
300–399	(869–022–00131–1)	21.00	July 1, 1994
400–End	(869–022–00132–9)	40.00	July 1, 1994
***35**	(869–026–00136–7)	12.00	July 1, 1995
36 Parts:			
*1–199	(869–026–00137–5)	15.00	July 1, 1995
200–End	(869–022–00135–3)	37.00	July 1, 1994
37	(869–022–00136–1)	20.00	July 1, 1994
38 Parts:			
0–17	(869–022–00137–0)	30.00	July 1, 1994
18–End	(869–022–00138–8)	29.00	July 1, 1994
39	(869–022–00139–6)	16.00	July 1, 1994
40 Parts:			
1–51	(869–022–00140–0)	39.00	July 1, 1994
52	(869–022–00141–8)	39.00	July 1, 1994
53–59	(869–022–00142–6)	11.00	July 1, 1994
60	(869-022-00143-4)	36.00	July 1, 1994
61–80	(869–022–00144–2)	41.00	July 1, 1994
81–85	(869–022–00145–1)	23.00	July 1, 1994
86–99	(869–022–00146–9)	41.00	July 1, 1994
100–149	(869–022–00147–7)	39.00	July 1, 1994
150–189	(869–022–00148–5)	24.00	July 1, 1994
190–259	(869–022–00149–3)	18.00	July 1, 1994
260–299	(869–022–00150–7)	36.00	July 1, 1994
300–399	(869–022–00151–5)	18.00	July 1, 1994
400–424	(869–022–00152–3)	27.00	July 1, 1994
425–699	(869–022–00153–1)	30.00	July 1, 1994
700–789	(869–022–00154–0)	28.00	July 1, 1994
790–End	(869–022–00155–8)	27.00	July 1, 1994
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–022–00156–6)	9.50	July 1, 1994
101	(869–022–00157–4)	29.00	July 1, 1994
102–200	(869–022–00158–2)	15.00	July 1, 1994
201–End	(869–022–00159–1)	13.00	July 1, 1994
42 Parts:			
1–399	(869–022–00160–4)	24.00	Oct. 1, 1994
400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
1–999	(869–022–00163–9)	23.00	Oct. 1, 1994
1000–3999	(869–022–00164–7)	31.00	Oct. 1, 1994
4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
44	(869–022–00166–3)	27.00	Oct. 1, 1994
45 Parts:			
1–199	(869–022–00167–1)	22.00	Oct. 1, 1994
200–499	(869–022–00168–0)	15.00	Oct. 1, 1994
500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
1200–End	(869–022–00170–1)	26.00	Oct. 1, 1994
46 Parts:			
1–40	(869–022–00171–0)	20.00	Oct. 1, 1994
41–69	(869–022–00172–8)	16.00	Oct. 1, 1994
70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
90–139	(869–022–00174–4)	15.00	Oct. 1, 1994
140–155	(869–022–00175–2)	12.00	Oct. 1, 1994
156–165	(869–022–00176–1)	17.00	[7] Oct. 1, 1993
166–199	(869–022–00177–9)	17.00	Oct. 1, 1994
200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
500–End	(869–022–00179–5)	15.00	Oct. 1, 1994
47 Parts:			
0–19	(869–022–00180–9)	25.00	Oct. 1, 1994
20–39	(869–022–00181–7)	20.00	Oct. 1, 1994
40–69	(869–022–00182–5)	14.00	Oct. 1, 1994
70–79	(869–022–00183–3)	24.00	Oct. 1, 1994
80–End	(869–022–00184–1)	26.00	Oct. 1, 1994
48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
2 (Parts 201–251)	(869–022–00187–6)	16.00	Oct. 1, 1994
2 (Parts 252–299)	(869–022–00188–4)	13.00	Oct. 1, 1994
3–6	(869–022–00189–2)	23.00	Oct. 1, 1994
7–14	(869–022–00190–6)	30.00	Oct. 1, 1994
15–28	(869–022–00191–4)	32.00	Oct. 1, 1994
29–End	(869–022–00192–2)	17.00	Oct. 1, 1994
49 Parts:			
1–99	(869–022–00193–1)	24.00	Oct. 1, 1994
100–177	(869–022–00194–9)	30.00	Oct. 1, 1994
178–199	(869–022–00195–7)	21.00	Oct. 1, 1994
200–399	(869–022–00196–5)	30.00	Oct. 1, 1994
400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
1000–1199	(869–022–00198–1)	19.00	Oct. 1, 1994
1200–End	(869–022–00199–0)	15.00	Oct. 1, 1994
50 Parts:			
1–199	(869–022–00200–7)	25.00	Oct. 1, 1994
200–599	(869–022–00201–5)	22.00	Oct. 1, 1994
600–End	(869–022–00202–3)	27.00	Oct. 1, 1994

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

[9] Note: Title 19, CFR Parts 141-199, revised 4-1-95 volume is being republished to restore inadvertently omitted text.