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September 7, 1995

Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 12 at 9:00 am

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

RESERVATIONS: 202–523–4538

ATLANTA, GA

WHEN: September 20 at 9:00 am

WHERE: Centers for Disease Control and Prevention
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Auditorium A
Atlanta, GA

RESERVATIONS: 404–639–3528
(Atlanta area)
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Contents

Federal Register

Vol. 60, No. 173

Thursday, September 7, 1995

Separate Parts In This Issue

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.

Rules and Regulations

Federal Register
Vol. 60, No. 173
Thursday, September 7, 1995

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AF36

Changes to Nuclear Power Plant Security Requirements Associated With Containment Access Control

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to delete certain security requirements for controlling the access of personnel and materials into reactor containment during periods of high traffic such as refueling and major maintenance. This action relieves nuclear power plant licensees of the requirement to separately control access to reactor containments during these periods. Deletion of this requirement decreases the regulatory burden for the licensees without degradation of physical security.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6261, e-mail sdf@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1991, the Commission re-examined the NRC's nuclear power plant security requirements associated with an internal threat contained in 10 CFR Part 73, ''Physical Protection of Plants and Materials.'' In a report to the Commission dated August 4, 1992 (SECY–92–272), the NRC staff identified requirements that were redundant, out of date, or marginal to safety. Following public meetings held to discuss these requirements, the NRC staff submitted a subsequent report to the Commission dated December 12, 1993 (SECY–93–326), with recommended changes to § 73.55. One of the recommended changes was the deletion of § 73.55(d)(8), which contained a requirement for separate access control to reactor containments, which is unneeded, and a requirement for locks and alarms, which is contained elsewhere in 10 CFR Part 73. The Commission has decided to remove this paragraph to provide burden relief to licensees without compromising the physical protection of licensed activities against radiological sabotage. The other recommendations contained in SECY–93–326 will be addressed in another NRC rulemaking action.

Proposed Rule and Public Comments

On May 10, 1995 (60 FR 24803), the NRC published, with a public comment period of 30 days, a proposed rule that would delete § 73.55(d)(8). Twenty-two comments were received: 20 from utilities, 1 from an industry group, and 1 from a labor union. All commenters supported the proposed rule. The commenters agreed that the proposed action would reduce the regulatory burden but would not degrade the physical security of nuclear power plants. The industry group further commented that significant savings could result from this rulemaking. One of the utilities commented that it would enable utilities to make more efficient use of their resources.

One utility questioned whether the same relief would apply when access to containment is from an area provided with access controls and other security features but not formally designated as a vital area. The same relief would not generically apply to these situations because the level of control varies for each area. However, the NRC will consider each situation on a case-by-case basis.

Another utility asked if its approved security plan, which already had requirements for access to containment directly from a protected area, was affected by this rulemaking. This rule affects access controls only from vital areas into containment. This rule does not affect access controls from protected areas into containment, thus, it does not affect any approved security plan for access to containment from a protected area. When access from a protected area into containment is necessary, existing access controls must remain in effect at the entrances to containment.

Final Rule

Based on the public comments, the NRC staff considers that no change to the final rule is necessary. Thus, the final rule remains the same as the proposed rule.

The final rule deletes paragraph (d)(8) of § 73.55. This amendment relieves licensees of an unnecessary burden, without degrading physical security. Moreover, since security personnel are no longer required to be assigned to a radiation control area, there will be a decrease in occupational exposure. NRC notes that this change applies only to access control from vital areas into reactor containment for the purpose of physical security and does not relieve a licensee of requirements established for the purpose of radiological control and emergency planning.

Environmental Impact: Categorical Exclusion

The Commission has determined that this rule is the type of action described as a categorical exclusion in 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0002.

Regulatory Analysis

Elimination of § 73.55(d)(8) relieves licensees of the requirement to station security personnel at entrances to containment during periods of high traffic. The potential savings to the licensees from the elimination of this requirement are substantial. Assuming, on the average, two security personnel are needed to control access to containment during the time the reactor is open, and assuming that the containment is open 50 days per major outage, with 2 major outages every 3 years, and a wage of approximately $30 per hour (loaded) for security personnel,

the total savings per reactor per year will be:

2 guards/reactor × 50 days/outage × ⅔ outages/year × $30/hr-guard × 24 hrs/day = $48,000/year-reactor.

With 110 operating nuclear power reactors, the total savings for the industry are potentially $5,280,000/year. Moreover, deletion of § 73.55(d)(8) results in a decrease in occupational exposure because security personnel will no longer be required to be within the radiation controlled area directly adjacent to containment.

Reactor containment or adjacent areas that provide access to containment are already vital areas. Thus, access of personnel into containment is already controlled. In addition, having security personnel control access of materials into containment provides no substantial benefit since material access into the protected area is already controlled and the containment is located within the protected area. Furthermore, after reactor containment is secured following periods of heavy traffic, existing NRC requirements for walkdown inspections and security searches apply and assure the security of the containment. Hence, the requirement that access into the reactor containment itself be separately controlled provides little or no additional security.

In addition, because a reactor containment is a vital area, it is subject to the vital area requirements for locks and alarms contained in other sections of § 73.55, as well as all other policies and procedures related to vital areas and equipment. Thus, the requirement for locks and alarms in paragraph (d)(8) is redundant.

Based on the above discussion, the NRC concludes that eliminating § 73.55(d)(8) provides relief to the licensees and lowers occupational exposure without compromising physical protection of licensed activities against radiological sabotage at nuclear power reactors.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because this amendment does not impose new requirements on existing 10 CFR Part 50 licensees. It is voluntary and should the licensee decide to implement this amendment, it is a reduction in burden to the licensee. Therefore, a backfit analysis has not been prepared for this amendment.

List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended; sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended; sec. 204, 88 Stat. 1242, as amended, 1245; sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

§ 73.55 [Amended]

2. In § 73.55, paragraph (d)(8) is removed and paragraph (d)(9) is redesignated as (d)(8).

Dated at Rockville, Maryland, this 21st day of August 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–22187 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 34–36174; File No. S7–40–92]

RIN 3235–AF91

Rules of Practice; Technical Amendments and Corrections

AGENCY: Securities and Exchange Commission.

ACTION: Technical amendments and corrections to final rules.

SUMMARY: This document contains technical amendments and corrected comments for the Securities and Exchange Commission's Rules of Practice adopted on June 9, 1995 and published Friday, June 23, 1995 (60 FR 32738). The Rules of Practice are the procedural rules that govern Commission administrative proceedings.

EFFECTIVE DATE: September 5, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew Z. Glickman, Office of the General Counsel at (202) 942–0870; U.S. Securities and Exchange Commission; 450 Fifth Street, NW., Stop 6–6; Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Background

The Commission recently consolidated its inspection and examination functions from the Divisions of Market Regulation and Investment Management into a new office—the Office of Compliance Inspections and Examinations. *See* 60 FR 39643 (Aug. 3, 1995) (establishment of office and delegation of authority). This release contains technical amendments to reflect these changes in the Rules of Practice and corrections to the comments associated with the changed rules. This release also corrects a citation error.

Comments (a) and (b) to Rule 230 (which originally appeared in the Supplementary Information section on page 32762, in the tenth line of the first column) are corrected to read as follows:

Comment (a): A respondent's right to inspect and copy documents under this rule is automatic; the respondent does not need to make a formal request for access through the hearing officer. Generally, the rule requires that the Division of Enforcement make available for inspection and copying documents obtained by the Division from persons not employed by the Commission during the course of its investigation prior to the institution of proceedings.

Final inspection or examination reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market Regulation or the Division of Investment Management, may be attorney work product, and other privileges may apply to such reports. Nonetheless, the Commission has determined as a general matter that these final reports will be made available, but only to named respondents in Commission-initiated adjudicative proceedings. This rule does not restrict the Commission's ability to withhold these reports from public disclosure in other contexts, such as pursuant to a request under the Freedom of Information Act. 5 U.S.C. 552.

Rule 230 is not the exclusive means by which a respondent may obtain access to or production of documents. Production of documents prepared by the staff may be required under the doctrine of *Brady v. Maryland*, 373 U.S. 83 (1963), or pursuant to Jencks Act requirements made applicable to the Commission pursuant to Rule 231, or may be sought by subpoena pursuant to Rule 232 or through other procedures. *See, e.g.*, Freedom of Information Act, 5 U.S.C. 552.

The Rule states that the Division of Enforcement shall (1) make available for inspection and copying (2) documents (3) obtained by the Division (4) in connection with the investigation leading to the institution of proceedings.

(1) The Division of Enforcement is required to make documents available for inspection and copying. It is not required to produce a copy of the documents to each respondent.

(2) The definition of the term ''documents'' in paragraph (a) is modeled on the definition of documents in Rule 34 of the Federal Rules of Civil Procedure.

(3) The Division of Enforcement's obligation under this rule relates to documents obtained by the Division of Enforcement. Documents located only in the files of other divisions or offices are beyond the scope of the rule.

(4) The ''investigation leading to the Division's recommendation to institute proceedings'' ordinarily is delineated by the investigation number or numbers under which requests for documents, testimony or other information were made. When an investigation is initiated by the Division of Enforcement it is assigned a number, often referred to as the ''case'' or ''investigation'' number. Each request for documents, testimony or other information from persons not employed by the Commission specifies the investigation or preliminary investigation number to which it relates. In turn, each written recommendation by the Division of Enforcement to institute proceedings identifies on its cover page, by investigation number, the source investigation or investigations to which it relates. Accordingly, the identity and content of the appropriate investigation file or files from which documents must be made available can be based on objective criteria.

Comment (b): Under paragraph (b), the Division can withhold documents under four exceptions. Exception (1) shields information subject to a claim of privilege. Exception (2) protects as attorney work product internal documents prepared by Commission employees, which will not be offered in evidence. Work product includes any notes, working papers, memoranda or other similar materials, prepared by an attorney in anticipation of litigation. *See Hickman v. Taylor*, 329 U.S. 495 (1947); *see also* Fed. R. Civ. P. 26 (b)(3) and (b)(5). Except to the limited extent specifically provided in paragraph (a), documents prepared by Commission staff are treated as attorney work product, and do not have to be made available pursuant to this rule. Accountants, paralegals and investigators who work on an investigation do so at the direction of the director, an associate director, an associate regional administrator or another supervisory attorney, and their work product is therefore shielded by the rule. A respondent's claim that work product should be turned over will necessarily be evaluated on a case-by-case basis.

Exception (3) protects the identity of a confidential source. *See* 5 U.S.C. 552(b)(7) (C) and (D). Exception (4) protects any other document or category of documents that the hearing officer determines may be withheld as not relevant to the subject matter of the proceeding, or otherwise for good cause shown. This exception provides a mechanism to address a situation where a single investigation involves a discrete segment or segments that are related only indirectly, or not at all, to the recommendations ultimately made to the Commission with respect to the particular respondents in a specific proceeding. To require that documents not relevant to the subject matter of the proceeding be made available, simply because they were obtained as part of a broad investigation, burdens the respondent as well as the Division of Enforcement with unnecessary costs and delay.

For example, a single investigation may encompass inquiry into an issuer's allegedly false accounting disclosure and an unrelated manipulation of the issuer's securities by a third party. If the recommendation to the Commission and resulting administrative proceeding involve only the accounting disclosures, the Division could seek leave to withhold trading records, transcripts and other documents related to the manipulation investigation.

Comment (a) to Rule 430 (which originally appeared in the Supplementary Information section on page 32777, in the fifth line of the second column) is corrected to read as follows:

Comment (a): Congress granted the Commission explicit authority to delegate certain functions to an individual commissioner, division directors and others in 1962. Pub. L. No. 87–592, 76 Stat. 394. This authority appears in Sections 4A and 4B of the Exchange Act, 15 U.S.C. 78d–1 and 78d–2, and was amended most recently in 1987. *See* Pub. L. No. 100–181, Title III, section 308(a), 101 Stat. 1254. The predecessor rule to Rules 430 and 431, former Rule 26, was adopted in 1963. *See* Securities Act Release No. 4588 (Mar. 8, 1963) (adopting release).

Due to the different nature of matters delegated to hearing officers, senior staff or the duty officer, the Commission's rules provide different mechanisms for review of such actions. *See* Rules 410 and 411 (procedures relating to initial decisions by a hearing officer); 17 CFR 200.42 (procedures relating to duty officer). Rule 430 relates to certain delegations made to staff. It applies only to review of actions taken pursuant to authority delegated in 17 CFR 200.30–1 through 200.30–18. Authority delegated by other provisions—for example, the delegation of authority to issue subpoenas pursuant to a private order directing investigation (''formal order'')—is not subject to the Rule.

Correction of Publication

Accordingly, the publication on June 23, 1995 of the final Rules of Practice, which were the subject of FR Doc. 95–14750, is corrected as follows:

§ 201.100 [Corrected]

1. On page 32797, in the eighth line of the first column, in § 201.100(b)(2) ''17 CFR 200.42.'' is corrected to read ''17 CFR 200.43.''

§ 201.230 [Corrected]

2. On page 32807, in the first column, in § 201.230, paragraph (a)(1)(vi) is corrected to read as follows:

''(vi) Any final examination or inspection reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market

Regulation, or the Division of Investment Management.''

§ 201.430 [Corrected]

3. On page 32814, in the first column, last line, in § 201.430(a) the reference to ''200.30–17'' is corrected to read ''200.30–18''.

4. On page 32814, in the second column, in § 201.430(c) the reference to ''200.30–17'' is corrected to read ''200.30–18''.

§ 201.431 [Corrected]

5. On page 32814, in the second column, in the sixth line of § 201.431(a) ''200.30–17'' is corrected to read ''200.30–18''.

Dated: August 31, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22110 Filed 9–6–95; 8:45 am]

BILLING CODE 8010–01–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 206

Implementing Rules for the Uruguay Round Agreements Act

AGENCY: International Trade Commission.

ACTION: Adoption of interim rules as final rules.

SUMMARY: The Commission has adopted as final rules, without change, interim rules that amend part 206 of the Commission's rules of practice and procedure with amendments made to sections 201–204 of the Trade Act of 1974 (19 U.S.C. 2251–2254) by the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809 (1994)). The URAA, among other things, amended sections 201–204 of the Trade Act to bring U.S. law into conformity with the Uruguay Round Agreement on Safeguards.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

The interim rules were published in the **Federal Register** on January 3, 1995 (60 FR 10). The interim amendment to section 206.17 was effective January 3, 1995; all other amendments were effective January 1, 1995. Comments on the interim rules were required to be received on or before April 3, 1995. No comments were received.

Accordingly, the Commission has adopted as final rules, without change, the interim rules amending 19 CFR part 206 that were published at 60 FR 10 on January 3, 1995.

List of Subjects in 19 CFR Part 206

Administrative practice and procedure, Investigations, Imports.

Authority: 19 U.S.C. 1335; 19 U.S.C. 2251–2254, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

By order of the Commission.

Issued: August 30, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–22235 Filed 9–6–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 4 and 602

[TD 8618]

RIN 1545–AM15

Definition of a Controlled Foreign Corporation, Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations governing the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation. These regulations are necessary because of changes made to the prior law by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989, and the Omnibus Budget Reconciliation Act of 1993. Certain conforming changes in the regulations were necessary because of changes made by the Deficit Reduction Act of 1984. The regulations will provide the public with the guidance to comply with those acts and will affect United States shareholders of controlled foreign corporations.

DATES: These regulations are effective September 7, 1995.

For dates of applicability, see § 1.954–0(a).

FOR FURTHER INFORMATION CONTACT: Valerie Mark of the Office of Associate Chief Counsel (International), within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:INTL:2 (INTL–0362–88). Telephone (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1068. The estimated average burden per respondent associated with the collection of information in this regulation is one hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR Part 1) under sections 954(b), 954(c) and 957(a) of the Internal Revenue Code (Code). Sections 954 and 957 were amended by sections 1201, 1221, 1222 and 1223 of the Tax Reform Act of 1986 (Pub. L. 99–514), by section 1012 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), by section 7811 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239) and by section 13233 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). These regulations are also issued under authority contained in section 7805 of the Code.

Temporary regulations (TD 8216) and a cross-referenced notice of proposed rulemaking (INTL–362–88) under sections 954 and 957 of the Code were published in the **Federal Register** on July 21, 1988 (53 FR 27489 and 53 FR 27532, respectively). Numerous written comments on the proposed and temporary regulations were received from the public. As explained below,

the comments were considered in the drafting of the final regulations.

Discussion of Major Comments and Changes to the Regulations

Section 1.954–1: Foreign Base Company Income

Section 1.954–1T(a)(3) and (5) (temporary regulations) apply the de minimis and full inclusion tests of section 954(b)(3) before the high tax exception of section 954(b)(4). Commenters have expressed concern that, in certain cases, the only amounts required to be included in the gross income of the United States shareholders of a controlled foreign corporation may be full inclusion income. This result may occur when subpart F income, other than full inclusion foreign base company income, qualifies for the high tax exception. In response to these comments, § 1.954–1(d)(6) provides that an amount that otherwise would be included as full inclusion foreign base company income, pursuant to the operation of the full inclusion test of section 954(b)(3)(B), will be excluded from full inclusion foreign base company income if more than 90 percent of the adjusted gross foreign base company and adjusted gross insurance income qualifies for the high tax exception described in section 954(b)(4) and the high tax election is actually made.

Section 1.954–1T(a)(4) provides that in computing net foreign base company income, foreign personal holding company income is reduced by related person interest expense before allocating and apportioning other expenses in accordance with § 1.904(d)–5(c)(2). Commenters understood this rule to be at variance with § 1.904(d)–5(c)(2), which requires related person interest expense to be allocated to passive foreign personal holding company income after the allocation of directly related expenses. In response to this comment, the rule regarding allocation of related person interest expense was removed from § 1.954–1T(a)(4) and (c) was amended to clarify that foreign base company income is reduced by directly related expenses before passive foreign personal holding company income is reduced by related person interest expense.

Section 1.954–1T(a)(7) treats amounts recharacterized as foreign base company income or insurance income under section 952(c) as adjusted net foreign base company income or adjusted net insurance income. Thus, these amounts are not included in net foreign base company income or net insurance income for purposes of applying the high tax exception. Commenters argued that the rules of paragraph (a)(7) should be amended to provide that amounts that are recharacterized under section 952(c)(2) should not be treated as adjusted net foreign base company income or adjusted net insurance income if the amounts would have qualified for the high tax exception. This comment was rejected because section 952(c)(2) does not incorporate the exclusions and special rules of section 954(b)(4). Additional rules regarding the coordination of sections 952(c) and 954 are being proposed under section 952 in a separate document published elsewhere in this issue of the **Federal Register.**

Several comments were made concerning the anti-abuse rules of § 1.954–1T(b)(4), which require aggregation of gross income of related controlled foreign corporations for purposes of the de minimis and full inclusion tests. One comment suggested that the aggregation rules of paragraph (b)(4) should be applied only if a purpose of first importance (as opposed to a principal purpose) is to avoid the application of the de minimis or full inclusion tests described in section 954(b)(3). This comment was rejected because the standard suggested is significantly more subjective than that of the regulations and is therefore unadministrable. However, it was determined that it was unnecessary to make the aggregation rules of paragraph (b)(4) applicable to the full inclusion test, for which there is not the same opportunity for tax avoidance.

One commenter suggested that the anti-abuse rules of § 1.954–1T(b)(4) should be amended to provide that the gross income of separate controlled foreign corporations is aggregated only if a substantial portion of the activities of the separate corporations would comprise a single branch, and that the presumptions described in paragraph (b)(4)(ii) should be eliminated. The commenter also suggested that the definition of related person for purposes of these rules should refer to the provisions of section 954(d)(3), rather than the broader provisions of section 267. These comments were rejected because the suggested amendments would unduly restrict the application of the anti-abuse rules. The presumptions described in paragraph (b)(4)(ii) may be rebutted, for example, by establishing reliance on the requirements of foreign law. The anti-abuse rules are necessary to prevent the misuse of the de minimis rule of section 954(b)(3), and do not impose a significant limitation or burden on the activities of controlled foreign corporations.

Section 1.954–1T(c) provides that in computing net foreign base company income, the gross amount in each category of foreign base company income may not be reduced below zero. Section 1.954–2T(e) provides that the excess of losses over gains from the sale or exchange of certain property may not be allocated to any other category of foreign personal holding company income. Section 1.954–2T (f) and (g) contain similar provisions with regard to excess losses from commodities and foreign currency transactions, respectively. Because the categories of foreign base company income described in section 954(a) and the categories of foreign personal holding company income described in section 954(c)(1)(B), (C) and (D) are defined in terms of net income, the temporary regulations interpreted the statutory scheme as generally precluding the allocation of excess losses from categories of foreign personal holding company income described in paragraph (e), (f), or (g) against other foreign personal holding company income categories. Commenters contended that by preventing any category of subpart F income from being reduced below zero, paragraph (c) caused inappropriate tax credit results and failed to harmonize the subpart F provisions with section 904(f)(5). Commentators stated that paragraphs (e), (f) and (g) should be amended to allow excess losses described in those paragraphs to be allocated to other categories of foreign personal holding company income.

Paragraph (c) has been amended to clarify that, in determining net income, if the amount in any category of foreign base company income (including any category of foreign personal holding company income) is less than zero, the loss may not reduce any other categories of foreign base company income (or foreign personal holding company income) except by operation of the earnings and profits limitation. Proposed regulations published elsewhere in this issue of the **Federal Register** will provide rules concerning the application of the earnings and profits limitation.

Section 1.954–1T(d) provides that the effective rate of foreign income tax on an item of income is determined in a manner consistent with the existing foreign tax credit regime under sections 904 and 960. In some cases, the amount of an item of income for foreign law purposes with respect to which foreign income tax is paid will be different from the amount for United States tax purposes. As a result, the effective rate of tax with respect to the item of income may be affected. In addition, because

pursuant to section 960 the foreign income taxes of a controlled foreign corporation more than three tiers below a United States shareholder are not considered, the high tax exception will never apply to items of income of such corporations.

Commenters suggested that certain foreign law accounting practices should be considered in determining the effective rate of tax on an item of income, for purposes of applying the high tax exception of section 954(b)(4) and paragraph (d) of the regulations. Commenters also contended that it is inappropriate to use section 960 to determine the effective rate of foreign tax and thus prevent consideration of taxes paid by controlled foreign corporations more than three tiers below the United States shareholder.

The comment that the high tax exception should not be limited to creditable taxes under section 960 was rejected. The high tax exception is not intended to apply to the extent that an item of income would be subject to residual United States tax if such item were included in the gross income of the United States shareholder. The taxes paid with respect to such item of income should be considered for purposes of the high tax exception only to the extent they are otherwise considered for United States taxing purposes. See Joint Committee on Taxation Staff, *General Explanation of the Tax Reform Act of 1986*, 99th Cong., 2d Sess. 970–71 (1986).

The comment that foreign law accounting practices should be considered in determining the effective rate of tax on an item of income, for purposes of applying the high tax exception, was also rejected. Such a rule would impose a significant burden on the IRS. It would require the IRS to monitor and apply foreign tax and accounting principles, and to reconcile their application with United States tax and accounting principles, both in the current tax year and in later tax years to prevent an item of income, deduction, credit, gain or loss from being duplicated or omitted. Further, the IRS would have to consider and identify the particular foreign tax and accounting principles that could be taken into account for purposes of these rules.

Section 1.954–1T(d)(4) defines the term *item of income* for purposes of the high tax exception by reference to the foreign tax credit and subpart F income categories to which the income relates. Thus, it is possible that amounts attributable to separate transactions may be included in the same item of income. If the income from the separate transactions were subject to foreign income tax at different rates, the effective rate of tax for the income item would reflect an average of the two (or more) rates of tax. One commenter has suggested that additional categories of income be created within the existing foreign tax credit and subpart F income groups to limit the effect of this tax rate blending.

The regulations rely on existing guidance under the foreign tax credit and subpart F provisions generally to define *item of income* for purposes of section 954(b)(4). To identify items of income on a transaction-by-transaction basis is inconsistent with the separate limitation categories of income described in section 904, and adds complexity by requiring different computations for purposes of these rules and the rules under the foreign tax credit provisions of the Code. Moreover, there is no bias in the existing rules toward a particular result.

Commenters suggested that the consistency rule of § 1.954–1T(d)(4)(ii)(B) be eliminated, to allow taxpayers to apply the high tax exception on an item-by-item basis. The consistency rule prohibits a taxpayer from selectively applying the high tax exception with respect to foreign personal holding company income that is passive income under section 904(d). Elimination of the consistency rule would provide a result that is incompatible with the foreign tax credit provisions of the Code, and thus the comment was rejected.

The final regulations clarify how the rules of paragraph (d) coordinate with the earnings and profits limitation of section 952(c)(1). Under § 1.954–1(d)(4)(ii), if the amount of income included in subpart F income for the taxable year is reduced by the earnings and profits limitation, the amount of income that is an item of income, for purposes of paragraph (d), is determined after the application of the rules of section 952(c)(1). An example was added to illustrate this rule.

Section 1.954–1T(d)(5) provides that the election to apply the high tax exception must be made by the controlling United States shareholders and is binding on all United States shareholders of the controlled foreign corporation. Commenters argued that the Secretary does not have the authority to bind all United States shareholders to a single election. This comment was rejected because it was determined that section 954(b)(4) provides the authority. Further, allowing each United States shareholder to separately elect the high tax exception would add undue complexity to the operation of the foreign tax credit rules.

Section 1.954–1(f) provides guidance on the definition of related person under section 954(d)(3).

Section 1.954–2: Foreign Personal Holding Company Income

Section 1.954–2T(a)(2)(i) provides that amounts that fall within the definition of income equivalent to interest, under paragraph (h), will be so treated though such amounts may also fall within the definition of gain from certain property transactions under paragraph (e), gain from a commodities transaction under paragraph (f) or foreign currency gain under paragraph (g). Paragraph (a)(2)(i) provides that amounts will be treated as income equivalent to interest even if these amounts are excluded from the computation of foreign personal holding company income under paragraphs (e), (f), or (g) because they are derived from certain qualifying business transactions. A commenter suggested that paragraph (a)(2)(i) should not treat income from qualifying business transactions excluded under paragraphs (e), (f), or (g) as income equivalent to interest. This comment was rejected. The rules regarding qualifying business transactions in paragraphs (e), (f) and (g) do not operate to exclude interest income from characterization as foreign personal holding company income. Income equivalent to interest within the meaning of section 954(c)(1)(E) and paragraph (h) generally should be treated like interest for purposes of subpart F.

Several commenters suggested that the test described in § 1.954–2T(a)(3) to determine the use for which property is held (for purposes of determining the character of the income, gain or loss realized from a disposition of such property) should not focus solely on the use of the property immediately prior to its disposition, but instead should consider the predominant use for which the property was held. This comment was accepted. Section 1.954–2(a)(3) provides that the use for which property is held is the use for which it was held for more than one-half of the period during which the controlled foreign corporation held the property. If there has been a change in use, however, and a principal purpose for such change in use was to avoid characterizing income or gain attributable to the property as foreign personal holding company income, then the change in use will be disregarded.

Section 1.954–2T(a)(3)(ii), *Examples 2* and *3* illustrate the rules regarding change in use for which property is

held. The final regulations delete these examples because *Example 1* sufficiently illustrated the rules of this paragraph. *Examples 4* and *5* of paragraph (a)(3)(ii) illustrate the change in use rules with respect to hedging transactions. The final regulations delete these examples because the rules governing hedging transactions are now generally contained in paragraph (a)(4)(ii).

Section 1.954–2T(a)(4)(i) lists some of the types of income that are included in the term *interest.* To clarify that this list was not meant to be exclusive, paragraph (a)(4)(i) has been amended to provide that the term *interest* includes all amounts that are treated as interest (including tax-exempt interest) under the Code and regulations or any other provision of law. A new sentence illustrates the types of income that would be treated as interest.

Section 1.954–2T(a)(4)(ii) provides that certain hedging transactions that reduce the risk of price changes in the cost of inventory and similar property are included within the definition of *inventory and similar property* if certain requirements are met and if they are so identified by the fifth day after which they are entered into. Paragraphs (f)(4) and (g)(4) of the temporary regulations contain definitions of the term *qualified hedging transaction* that have similar five-day identification requirements. These several definitions of a hedging transaction have been consolidated in § 1.954–2(a)(4)(ii) which contains a definition of *bona fide hedging transaction* and new identification requirements for bona fide hedging transactions that apply for purposes of computing foreign personal holding company income under § 1.954–2.

Section 1.954–2(a)(4)(ii)(A) generally defines a bona fide hedging transaction as a transaction that meets the requirements of § 1.1221–2 (a) through (c) with two exceptions. First, the risk being hedged may be with respect to ordinary property, section 1231 property or a section 988 transaction. Second, a transaction that hedges the liabilities, inventory or other assets of a related person, or that is entered into to assume or reduce risks of a related person, will not be treated as a bona fide hedging transaction. Several commenters had sought to expand the definition of qualified hedging transactions to include hedging transactions conducted by a controlled foreign corporation that is a currency coordination center, i.e., a controlled foreign corporation that aggregates the currency exposures of related controlled foreign corporations and hedges such exposures. The statute provides, however, that a transaction must satisfy the business needs of the particular controlled foreign corporation. See also Joint Committee on Taxation Staff, *General Explanation of the Tax Reform Act of 1986,* 99th Cong., 2d Sess. 976 (1986).

Section 1.954–2(a)(4)(ii)(B) provides identification requirements for a bona fide hedging transaction. The same-day identification and the recordkeeping requirements of § 1.1221–2 apply for transactions entered on or after March 7, 1996. For bona fide hedging transactions entered into prior to this date and after July 22, 1988, the transaction must be identified by the close of the fifth day after the day on which it is entered into. For bona fide hedging transactions entered into prior to July 22, 1988, the transaction must be identified reasonably contemporaneously with the date it is entered into but no later than within the normal period prescribed under the method of accounting of the controlled foreign corporation used for financial reporting purposes.

Section 1.954–2(a)(4)(ii)(C) describes the treatment of transactions that are misidentified as hedging transactions, and hedging transactions that the taxpayer fails to identify as such. Paragraph (a)(4)(ii)(C) also provides relief for taxpayers that have identified, or failed to identify, a hedging transaction due to inadvertent error. These misidentification rules are substantially similar to the rules in § 1.1221–2(f), modified for purposes of the subpart F regime.

Section 1.954–2T(a)(4)(iii) defines regular dealer, and states that, ''purchasing and selling property through a regulated exchange or off-exchange market (for example, engaging in futures transactions) is not actively engaging as a merchant'' for purposes of these rules. This provision was intended to mean that such purchasing and selling activity alone, in the absence of other activities, will not qualify a controlled foreign corporation as a regular dealer within the meaning of paragraph (a)(4)(iii). Because commenters indicated that this reference to purchasing and selling through a regular exchange or off-exchange market was confusing, this provision was removed. Further, the definition of regular dealer was amended. Section 1.954–2(a)(4)(iv) provides that a controlled foreign corporation will be a regular dealer if it regularly and actively offers to, and in fact does, engage in certain specified activities with customers who are not related persons (as defined in section 954(d)(3)) with respect to the CFC. Examples were added to clarify that a controlled foreign corporation that qualifies as a dealer under § 1.954–2(a)(4)(iv) will not be disqualified from being treated as a regular dealer because it also engages in transactions with related persons.

The temporary regulations define *dealer property* as property held by a controlled foreign corporation that is a regular dealer in property of such kind in its capacity as a dealer. The temporary regulations also state that property held for investment or speculation is not dealer property. A commenter suggested that property should be considered dealer property within the meaning of § 1.954–2T(a)(4)(iv) if the controlled foreign corporation holding the property is a regular dealer in such property. This comment was rejected because it proposes an unduly expansive definition of dealer property. Paragraph (a)(4), therefore, generally continues to define dealer property in the same manner as the temporary regulations.

The final regulations do clarify, however, that if a controlled foreign corporation qualifies as a regular dealer, all of the property held in a dealer capacity by that corporation is treated as dealer property. Thus, dealer property includes property arising from a transaction entered into with a related person, as long as the controlled foreign corporation is a regular dealer and holds the property in its capacity as a dealer, and not for investment or speculation. The examples of § 1.954–2(a)(4)(vi) illustrate this rule. A rule has been added for licensed securities dealers under which only securities identified as held for investment under section 475(b) or 1236 will be treated as held for investment or speculation. Also, to conform to amendments to section 954(c)(1)(B) made by the Technical and Miscellaneous Revenue Act of 1988, § 1.954–2(a)(4)(v)(C) provides that a bona fide hedging transaction with respect to dealer property is treated as a transaction in dealer property.

Section 954(c)(2)(B) and § 1.954–2T(b)(2) exclude from foreign personal holding company income export financing interest that is derived in the active conduct of a banking business. A commenter suggested that paragraph (b)(2) should treat a controlled foreign corporation as engaged in the conduct of a banking business even if it transfers the servicing of loans to related or unrelated parties. This comment was rejected because servicing of loans is a fundamental element of banking activity that gives rise to export financing interest for which an exception from foreign personal holding company income is intended.

Section 1.954–2T(b)(2) references the definition of export financing interest contained in section 904(d)(2)(G). Under section 904(d)(2)(G), the property that is financed must be manufactured, produced, grown or extracted in the United States by the taxpayer or a related person. Section 1.954–2(b)(2) clarifies that § 1.927(a)–1T(c)(1) applies for purposes of determining whether property is manufactured, produced, grown or extracted in the United States.

Section 1.954–2T(b)(2) also provides that the term *export financing interest* does not include income from related party factoring that is treated as interest under section 864(d)(1) or (6). The final regulations contain examples that clarify that if amounts are not treated as interest under section 864(d)(1) or (6) because the exception under section 864(d)(7) applies, these amounts may be export financing interest under paragraph (b)(2).

Section 954(c)(3)(A) and § 1.954–2T(b) (3) and (4) provide that certain dividend, interest, rent or royalty income received from related corporate payors is not included in foreign personal holding company income. To reflect amendments to section 954(c)(3)(A) by the Revenue Reconciliation Act of 1989, the final regulations provide that if a partnership with one or more corporate partners makes a payment of interest, rent or royalties, the interest, rent or royalty payment will be treated as paid by a corporate partner to the extent the payment gives rise to a partnership item of deduction that is allocable to the corporate partner or to the extent that a partnership item reasonably related to the payment would be allocated to the corporate partner under an existing allocation under the partnership agreement. To the extent the payment is treated as made by the corporate partner, it will be excluded from the foreign personal holding company income of the recipient if the corporate partner otherwise satisfies the conditions of section 954(c)(3)(A).

Under § 1.954–2T(b)(3)(ii), interest may not be excluded from foreign personal holding company income of the recipient to the extent the deduction for interest is allocated to the payor's subpart F income. To clarify how this rule is to be applied when a controlled foreign corporation is both the recipient and payor of interest, § 1.954–2(b)(4)(ii)(B)(*2*) was added, which parallels the rule contained in § 1.904–5(k)(2).

Section 1.954–2T(b)(3) provides that, to exclude dividends and interest received from related corporate payors from foreign personal holding company income, a substantial part of the payor's assets must be used in a trade or business in the payor's country of incorporation. Section 1.954–2T(b)(3)(iv) provides that a substantial part of the payor's assets will be considered to be used in a trade or business in the payor's country of incorporation if, for each quarter of the taxable year, the average value of its assets which are so used is over 50 percent of the average value of all of its assets (determined as of the beginning and end of the quarter). To simplify the application of this rule, § 1.954–2(b)(4)(iv) provides that the average value of assets is to be determined on a yearly rather than a quarterly basis by averaging the values of assets as of the close of each quarter.

Section 1.954–2T(b)(3)(vi)(A) provides that for purposes of the substantial assets test, tangible property (other than inventory) is generally considered located where it is physically located. Paragraph (b)(3)(vi)(B) contains an exception for property temporarily located elsewhere for inspection or repair. A commenter suggested that, in addition to this exception, the regulations should restore the exception contained in prior regulations that treated purchased property located abroad and intended for prompt shipment to the country of incorporation as property located in the country of incorporation. This comment was rejected because this provision would have been inconsistent with the rule that property purchased for use in a trade or business is not considered used in a trade or business until it is placed in service.

Section 1.954–2T(b)(3)(vii)(A) provides that for purposes of the substantial assets test, the location of intangible property is determined based on the site of the activities conducted by the payor during the taxable year in connection with the use or exploitation of the property. The country in which services are performed is determined under the principles of section 954(e) and § 1.954–4(c). This rule was amended to provide more comprehensive guidance to determine the situs of activities in connection with the use or exploitation of intangible property. Section 1.954–2(b)(4)(vii)(B) provides that the country in which the activities connected to the use or exploitation of property are conducted is the country in which the expenses associated with these activities are incurred by the payor or its agent or an independent contractor.

Section 1.954–2T(b)(3)(vii)(A) provides that the intangible property is considered located in the payor's country of incorporation during each quarter of the taxable year if the activities connected with its use or exploitation are conducted in its country of incorporation during the entire taxable year. A commenter argued that this test is inconsistent with the quarterly determination required by the substantial assets test of § 1.954–2T(b)(3)(iv). Changes were made to the location of property rules (§ 1.954–2(b)(4)(vi) through (ix)) so that relevant determinations are made for each quarter separately.

The final regulations continue to reserve on the provision of special rules regarding the location of assets of banks and insurance companies for purposes of the same-country exception. Comments are invited regarding the need for special guidance on this issue.

Several comments questioned the application of the rules of § 1.954–2T(b)(6), pursuant to which interest income of a controlled foreign corporation that is described in section 103 is included in foreign personal holding company income but is characterized as tax-exempt interest when included in the gross income of the United States shareholders. The purpose of this rule was to prevent a person from avoiding the consequences of the alternative minimum tax provisions by investing in tax-exempt obligations described in section 103 through a controlled foreign corporation.

The final regulations reserve on the treatment of tax-exempt interest. The administrative complexity of applying the rule described in the temporary regulations, and the potential for double taxation that it creates, argue against its continued application. Proposed regulations, published elsewhere in this issue of the **Federal Register**, will provide rules regarding the treatment of tax-exempt interest. In the interim, the rules of the temporary regulations continue to apply.

Section 1.954–2T(b)(5) provides that the determination whether rents and royalties are derived from the active conduct of a trade or business is made under the facts and circumstances of each case, and refers to paragraphs (c) and (d) for the application of its provisions. Commenters have asked whether only the facts and circumstances described in paragraphs (c) and (d) may be considered. The final regulations are clarified to reflect that whether rents or royalties are derived in the active conduct of a trade or business is determined solely under the provisions of paragraphs (c) and (d).

Section 1.954–2T(c)(2)(iii) defines *active leasing expenses* for purposes of

determining whether rental income is derived in the active conduct of a trade or business. A commenter suggested that paragraph (c)(2)(iii) be amended to state that if a corporation sells property of the same type as the property that is leased, the corporation's expenses that are of the type described in that paragraph may be pro-rated on any reasonable basis between the leasing and the sales function. It was determined that the change requested by this commenter was unnecessary because paragraph (c)(2)(iii) already defines active leasing expenses as deductions properly allocable to rental income.

A commenter suggested that an example be added to § 1.954–2T(c) to illustrate that expenses such as payments to third parties for insurance, utilities and repairs are considered active leasing expenses and not amounts paid to agents or independent contractors. The regulations were amended in response to this comment. Section 1.954–2(c)(2)(iii)(D) provides that the term *active leasing expenses* does not include payments to agents or independent contractors other than payments for insurance, utilities and other expenses for like services or capitalized property. A similar change was made to the definition of the term *adjusted leasing profit.*

Section 954(c)(1)(B) and § 1.954–2T(e) include in foreign personal holding company income the excess of gains over losses from certain property transactions. Section 1.954–2T(e)(1)(i) provides that gain or loss that is treated as capital gain or loss under section 988(a)(1)(B) is not foreign currency gain or loss but rather gain or loss from a property transaction under paragraph (e). A commenter contended that gain or loss from transactions described in section 988(a)(1)(B) should be characterized as gain or loss described in section 954(c)(1)(C) and § 1.954–2T(f) rather than in section 954(c)(1)(B) and paragraph (e). This comment was rejected, because the capital transactions described in section 988(a)(1)(B) are more appropriately subject to the provisions of section 954(c)(1)(B) and paragraph (e). This provision is now contained in § 1.954–2(g)(5).

A commenter asked that gain from a disposition of stock of a subsidiary be excluded from foreign personal holding company income to the extent that gain from the subsidiary's disposition of its assets would be so excluded. There is no statutory authority for the position recommended by the commenter, however. In addition, the look-through treatment proposed by the commenter is inconsistent with the treatment prescribed for dispositions of interests in a partnership or trust under section 954(c)(1)(B)(ii). For these reasons, the comment was rejected.

Pursuant to § 1.954–2T(e)(3)(vi), gain from a disposition of non-depreciable intangible property or goodwill is characterized as foreign personal holding company income unless the intangible property is disposed of in connection with a disposition of the entire trade or business of the controlled foreign corporation. Commenters have argued that the gain should be excluded from foreign personal holding company income if such property is used in the trade or business of the controlled foreign corporation, without regard to whether an entire trade or business of the controlled foreign corporation is sold.

The regulations were modified in response to this comment. Section 1.952–2(e)(3)(iv) excludes from foreign personal holding company income any gain or loss of a controlled foreign corporation from a disposition of intangible property, goodwill or going concern value to the extent used or held for use in the trade or business of the controlled foreign corporation.

Section 1.954–2T(e)(4) provides that gain or loss from the sale, exchange or retirement of a debt instrument is included in the computation of foreign personal holding company income under paragraph (e) with certain exceptions. However, a loss on a debt instrument taken in consideration for the sale or exchange of property is excluded from foreign personal holding company income if the gain or loss from that underlying sale or exchange is not includible in foreign base company income. This rule was eliminated from the final regulations because it was inconsistent to prevent a controlled foreign corporation from using these losses to offset subpart F income when gain from such debt instruments was not excepted from the general inclusion rule.

Section 1.954–2T(e)(5) provides that rights to acquire property, other than certain property that is dealer property or inventory property, are characterized as property that does not give rise to income for purposes of section 954(c)(1)(B). One commenter has suggested that such rights should not be characterized as property that does not give rise to income. This comment was rejected because any gain that may arise upon a disposition of an option, warrant, or other right to acquire property, other than gain from a disposition of inventory or dealer property, is income of the type intended to be characterized as foreign personal holding company income for purposes of section 954(c)(1)(B). The provisions of § 1.954–2T(e)(5) are now incorporated into the definition of property that does not give rise to income under § 1.954–2(e)(3). However, the final regulations clarify that notional principal contracts are excluded from the definition of property that does not give rise to income. (But see § 1.954–2 (f), (g) and (h).)

Section 954(c)(1)(C) and § 1.954–2T(f) provide rules for including the excess of gains over losses from commodities transactions in foreign personal holding company income. Several commenters argued that § 1.954–2T(f)(2)(i) defines *commodity* too broadly, and that, like sections 553 and 864, the regulations should apply only to commodities that are actively traded on a regulated exchange. This comment was rejected because the statute and its legislative history make clear that section 954(c)(1)(C) is intended to apply broadly to any commodity of a kind that is actively traded. Thus, there is no reason to distinguish income from a disposition of a commodity actively traded on a regulated exchange from income from a disposition of a commodity of a kind that is otherwise actively traded.

Although § 1.954–2(f)(2)(i) no longer explicitly provides that nonfunctional currency is a commodity, nonfunctional currency continues to fall within the general definition of *commodity.* Consequently, foreign currency is still treated as a commodity if the currency is actively traded or if contractual interests in the currency are actively traded. Under the ordering rules of paragraph (a)(2), however, paragraph (g) (foreign currency transactions) continues to apply before paragraph (f). Thus, unless an election is made under section 988(c)(1)(D)(ii), a currency futures contract is treated as a commodities transaction, while a currency forward contract is generally treated as a foreign currency transaction.

Section 1.954–2T(f)(1) excludes gains and losses from qualified active sales and qualified hedging transactions from the computation of foreign personal holding company income under paragraph (f). In defining *qualified active sale,* paragraph (f)(3) requires substantially all of the controlled foreign corporation's business to be as an active producer, processor, merchant or handler of commodities of like kind. Commenters argued that by using the phrase ''of like kind,'' § 1.954–2T(f)(3) defines *qualified active sales* too narrowly. The ''of like kind'' language was not intended to require that all of the commodities be of one kind, but

rather that the controlled foreign corporation must be an active producer, etc., with respect to each kind of commodity. To avoid confusion, the ''of like kind'' language has been eliminated from the definition of the term *qualified active sale.*

Section 1.954–2T(f)(3)(ii) defines the term *sale of commodities.* Commenters questioned the requirement, incorporated in the definition of this term, that the corporation hold the commodity in physical form. This comment was accepted. The final regulations no longer require the controlled foreign corporation to hold the commodity in physical form. Section 1.954–2(f)(2)(iii)(B) requires only that the controlled foreign corporation hold the commodity directly and not through an independent contractor. The retention of this requirement is consistent with the legislative history of section 954(c)(1)(C), which makes clear that the exclusion from foreign personal holding company income was intended to apply only with respect to commodities for which controlled foreign corporations are active producers, processors, handlers or merchants. Section 1.954–2(f)(2)(iii)(D) provides that activities of employees of entities related to the controlled foreign corporation may be treated as activities directly engaged in by the controlled foreign corporation if the employees are paid and supervised by the controlled foreign corporation.

Section 1.954–2(f)(2)(iii)(B) also amends the definition of the term *active conduct of a commodities business* by clarifying that the requirements specified in that paragraph must be satisfied with respect to each commodity and that property may be held either as dealer property or as inventory or similar property.

Section 954(c)(1)(C)(ii) and § 1.954–2T(f) (1) and (3) exclude income attributable to commodities transactions from foreign personal holding company income if substantially all of the business of a controlled foreign corporation is as an active producer, processor, merchant or handler of commodities. Section 1.954–2T(f)(3)(iv) provides that the controlled foreign corporation will satisfy the substantially all requirement if 85 percent of its taxable income for the taxable year is attributable to qualified active sales and qualified hedging transactions. Several commenters argued that this test could fail to reflect the nature of the controlled foreign corporation's business accurately in some years because of the volatility of certain commodities markets.

To accommodate this concern, § 1.954–2(f)(2)(iii)(C) modifies the definition of the term *substantially all* by applying the 85 percent test to gross receipts rather than taxable income. To prevent manipulation of this modified test, a provision was added under which the District Director may disregard any sale or hedging transaction that has as a principal purpose manipulation of the 85 percent test.

Section 1.954–2T(f)(4) defines the term *qualified hedging transaction* as a bona fide hedging transaction that is entered into primarily to reduce the risk of price change with respect to commodities sold or to be sold in qualified active sales. A commenter argued that a bona fide hedging transaction should not be required to relate to a qualified active sale to be treated as a qualified hedging transaction. This comment was rejected because this provision is based on the statutory requirement that qualified hedging transactions must arise out of the business of the controlled foreign corporation as an active producer, processor, merchant or handler of commodities. Thus, the rule of the temporary regulations is retained.

Section 954(c)(1)(D) and § 1.954–2T(g) include in foreign personal holding company income the net foreign currency gains attributable to section 988 transactions. The rules in § 1.954–2T(g)(2)(i) governing the treatment of gain or loss attributable to foreign currency transactions in hyperinflationary currencies have been removed. Section 1.954–2(g)(5)(iii) provides that the applicable rules of section 985 will apply to such transactions.

Section 1.954–2T(g)(2)(ii) excludes from foreign personal holding company income gain or loss from qualified business transactions that are separately identified, and gain or loss from qualified hedging transactions that are identified with, or traced to, a qualified business transaction. Many commenters argued that these rules are too cumbersome to apply. They contended that a controlled foreign corporation that has a large number of qualified business transactions may not hedge such transactions individually, and that it is difficult or impossible in such cases to relate a hedge to one or even several qualified business transactions. The commenters also argued that the alternative election to treat all currency gain (or loss) as foreign personal holding company income (or loss allocable to foreign personal holding company income) does not provide adequate relief for controlled foreign corporations whose hedging activities relate to qualified business transactions on a net basis but give rise to foreign currency gain that is treated as foreign personal holding company income.

The regulations are modified in response to those comments. Section 1.954–2(g)(2)(ii) excludes from foreign personal holding company income foreign currency gain or loss directly related to the business needs of the controlled foreign corporation. Foreign currency gain or loss is directly related to the business needs of the corporation, first, if it can be clearly determined that it arises from a transaction entered into or property used in the normal course of the corporation's trade or business and the transaction or property does not itself give rise to subpart F income (other than foreign currency gain or loss), or, second, if it arises from a bona fide hedging transaction with respect to such a transaction or property. To exclude gain or loss from a hedging transaction from foreign personal holding company income under this rule, corporations need not trace a hedging transaction to a specific transaction or property if all (or all but a de minimis amount) of the aggregate risks being hedged are within the business needs exception and the hedging transaction otherwise satisfies the requirements of section 1221, as modified for this purpose.

Section 1.954–2(g)(2)(ii)(C) provides a specific dealer exception under which transactions described in section 988(c)(1)(B)(iii) and (C) that are entered into by a regular dealer, in its capacity as a dealer, are treated as directly related to its business needs for purposes of the exclusion under § 1.954–2(g)(2)(ii). Because a corporation's borrowings support all of its activities, paragraph (g)(2)(iii) provides that foreign currency gain or loss attributable to an interest-bearing liability that is not covered by paragraph (g)(5)(iv) is characterized as subpart F income and non-subpart F income on the same basis as interest expense is allocated and apportioned. Thus, for example, exchange gain or loss from an unhedged interest-bearing liability may fall under this rule.

Section 1.954–2T(g)(3) provides that a transaction will not be treated as a qualified business transaction if the foreign currency gain or loss from the transaction is attributable to property or an activity of a kind that gives rise to subpart F income. Commenters have argued that this requirement is too restrictive because it may cause the gain or loss from the underlying transaction, and the foreign currency gain or loss attributable to the transaction, to be in

different separate categories for foreign tax credit purposes.

In response to this comment, a new election was added to paragraph (g). Under § 1.954–2(g)(3), the controlling United States shareholders may elect to have the controlled foreign corporation include foreign currency gain or loss that would otherwise be included in foreign personal holding company income under paragraph (g) in the category of subpart F income to which such gain or loss relates. This election works in conjunction with the general rules of paragraph (g)(2). Thus, for example, this election may apply to currency gain or loss that would otherwise be treated as foreign personal holding company income under paragraph (g) even if other currency gain or loss is excluded under the business needs exception of paragraph (g)(2)(ii).

As described above, the temporary regulations permit taxpayers to elect to treat all foreign currency gain or loss as foreign personal holding company income. The final regulations retain this election, with modifications. Under § 1.954–2(g)(4), the controlling United States shareholders of the controlled foreign corporation may elect to include in the computation of foreign personal holding company income net foreign currency gains or losses attributable to any section 988 transaction and any section 1256 contract that would be a section 988 transaction but for section 988(c)(1)(D). Shareholders are not permitted to make separate elections for section 1256 contracts and section 988 transactions. An election under paragraph (g)(4) supersedes an election under paragraph (g)(3).

Section 1.954–2(g)(5)(iv) reserves on the treatment of gain or loss allocated under § 1.861–9. It is anticipated that when § 1.861–9 is finalized, a provision will be added to this paragraph to indicate that gain or loss that is allocated or apportioned under section 861 in the same manner as interest expense is not foreign currency gain or loss under paragraph (g).

Section 954(c)(1)(E) and § 1.954–2T(h) include income equivalent to interest in foreign personal holding company income. A commenter argued that the term *income equivalent to interest* might be read to include income from a wide range of interest rate sensitive transactions entered into by a securities dealer or commodities producer, processor, merchant or handler in the ordinary course of its business. The commenter suggested that the regulations should be modified to confirm that such income is not income equivalent to interest.

The final regulations do not contain a general dealer exception that applies to all income equivalent to interest because income equivalent to interest is generally treated like interest, for which no general dealer exception is provided. However, consistent with Notice 89–90 (1989–2 C.B. 407), § 1.954–2(h)(3)(ii) provides a specific dealer exception for income from notional principal contracts.

Section 1.954–2T(h)(1) provides that income equivalent to interest does not include income attributable to notional principal contracts except to the extent that such contracts are part of an integrated transaction that gives rise to income equivalent to interest. Notice 89–90 stated, however, that final regulations would provide that income equivalent to interest would include income from notional principal contracts regardless of whether the notional principal contract is integrated with an investment, because notional principal contracts generally affect the all-in cost of interest-bearing liabilities or the return on interest-bearing assets. Accordingly, § 1.954–2(h)(3) provides that income from notional principal contracts based solely on interest rates or interest rate indices is income equivalent to interest, and paragraph (h)(1)(ii) provides that income from a notional principal contract covered by § 1.861–9T is not income equivalent to interest. Paragraph (f) continues to apply to notional principal contracts based on commodities (or a commodities index), and paragraph (g) continues to apply to notional principal contracts covered by section 988.

Section 1.954–2T(h)(3) treats factoring income as income equivalent to interest, with certain exceptions. Commenters have argued that income realized by a credit card company from factoring its receivables (which is attributable to the discount at which it acquires the receivables from the business establishments honoring its credit card) does not represent an interest equivalent amount, but instead represents other types of income, such as compensation for services.

This comment was rejected. It is true that the income attributable to the discount at which a controlled foreign corporation acquires a receivable reflects not only the time value of money, but also certain other elements (for example, collection risk and cost). However, the factoring income derived by the controlled foreign corporation is analogous to interest income derived from a loan made by a bank, which reflects not only the time value of money, but also the other elements of the discount income received in the factoring transaction described above. The Tax Reform Act of 1986 repealed the exclusion from foreign personal holding company income of such interest income derived by a bank. The repeal of this provision indicates that interest income is not intended to be excluded from foreign personal holding company income merely because it may reflect more than the time value of money. Income equivalent to interest should not be treated differently.

Some of the rules described in the final regulations are inconsistent with provisions of §§ 1.954–3 through 1.954–8, as well as the regulations under other provisions of subpart F. In such cases, these final regulations are intended to apply instead of the regulations under other provisions of section 954 and of subpart F generally. Section 1.952–3 is removed because the rules of that section are replaced by § 1.954–1. Other conforming changes are being considered in a separate regulations project.

Many nonsubstantive structural and editorial changes were made to these final regulations for clarity.

Drafting Information

The principal authors of these regulations are Valerie Mark and, with respect to financial products, Elissa Shendalman of the Office of the Associate Chief Counsel (International), IRS. However, personnel from other offices of the IRS and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Parts 1 and 4

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 4 and 602 are amended to read as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by removing the authority citation for ''Section 1.954–0T, 1.954–1T, 1.954–2T and 1.957–1T'' and adding the following citations in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.954–0 also issued under 26 U.S.C. 954 (b) and (c).

Section 1.954–1 also issued under 26 U.S.C. 954 (b) and (c).

Section 1.954–2 also issued under 26 U.S.C. 954 (b) and (c).

* * * * *

Section 1.957–1 also issued under 26 U.S.C. 957. * * *

§ 1.952–3 [Removed]

Par. 2. Section 1.952–3 is removed.

Par. 3. Sections 1.954–0, 1.954–1 and 1.954–2 are added to read as follows:

§ 1.954–0 Introduction.

(a) *Effective dates*—(1) *Final regulations*—(i) *In general.* Except as otherwise specifically provided, the provisions of §§ 1.954–1 and 1.954–2 apply to taxable years of a controlled foreign corporation beginning after November 6, 1995. If any of the rules described in §§ 1.954–1 and 1.954–2 are inconsistent with provisions of other regulations under subpart F, these final regulations are intended to apply instead of such other regulations.

(ii) *Election to apply final regulations retroactively*—(A) *Scope of election.* An election may be made to apply the final regulations retroactively with respect to any taxable year of the controlled foreign corporation beginning on or after January 1, 1987. If such an election is made, these final regulations must be applied in their entirety for such taxable year and all subsequent taxable years. All references to section 11 in the final regulations shall be deemed to include section 15, where applicable.

(B) *Manner of making election.* An election under this paragraph (a)(1)(ii) is binding on all United States shareholders of the controlled foreign corporation and must be made—

(*1*) By the controlling United States shareholders, as defined in § 1.964–1(c)(5), by attaching a statement to such effect with their original or amended income tax returns for the taxable year of such United States shareholders in which or with which the taxable year of the CFC ends, and including any additional information required by applicable administrative pronouncements, or

(*2*) In such other manner as may be prescribed in applicable administrative pronouncements.

(C) *Time for making election.* An election may be made under this paragraph (a)(1)(ii) with respect to a taxable year of the controlled foreign corporation beginning on or after January 1, 1987 only if the time for filing a return or claim for refund has not expired for the taxable year of any United States shareholder of the controlled foreign corporation in which or with which such taxable year of the controlled foreign corporation ends.

(D) *Revocation of election.* An election made under this paragraph (a)(1)(ii) may not be revoked.

(2) *Temporary regulations.* The provisions of §§ 4.954–1 and 4.954–2 of this chapter apply to taxable years of a controlled foreign corporation beginning after December 31, 1986 and on or before November 6, 1995. However, the provisions of § 4.954–2(b)(6) of this chapter continue to apply. For transactions entered into on or before October 10, 1995, taxpayers may rely on Notice 89–90, 1989–2 C.B. 407, in applying the temporary regulations.

(3) *§§ 1.954A–1 and 1.954A–2.* The provisions of §§ 1.954A–1 and 1.954A–2 (as contained in 26 CFR part 1 edition revised April 1, 1995) apply to taxable years of a controlled foreign corporation beginning before January 1, 1987. All references therein to sections of the Code are to the Internal Revenue Code of 1954 prior to the amendments made by the Tax Reform Act of 1986.

(b) *Outline of regulation provisions for sections 954(b)(3), 954(b)(4), 954(b)(5) and 954(c) of the Internal Revenue Code.*

§ 1.954–1 Foreign base company income.

(a) *In general*—(1) *Purpose and scope.* Section 954 and §§ 1.954–1 and 1.954–2 provide rules for computing the foreign base company income of a controlled foreign corporation. Foreign base company income is included in the subpart F income of a controlled foreign corporation under the rules of section 952. Subpart F income is included in the gross income of a United States shareholder of a controlled foreign corporation under the rules of section 951 and thus is subject to current taxation under section 1, 11 or 55 of the Internal Revenue Code. The determination of whether a foreign corporation is a controlled foreign corporation, the subpart F income of which is included currently in the gross income of its United States shareholders, is made under the rules of section 957.

(2) *Gross foreign base company income.* The gross foreign base company income of a controlled foreign corporation consists of the following categories of gross income (determined after the application of section 952(b))—

(i) Foreign personal holding company income, as defined in section 954(c);

(ii) Foreign base company sales income, as defined in section 954(d);

(iii) Foreign base company services income, as defined in section 954(e);

(iv) Foreign base company shipping income, as defined in section 954(f); and

(v) Foreign base company oil related income, as defined in section 954(g).

(3) *Adjusted gross foreign base company income.* The term *adjusted gross foreign base company income* means the gross foreign base company income of a controlled foreign corporation as adjusted by the de minimis and full inclusion rules of paragraph (b) of this section.

(4) *Net foreign base company income.* The term *net foreign base company income* means the adjusted gross foreign base company income of a controlled foreign corporation reduced so as to take account of deductions (including taxes) properly allocable or apportionable to such income under the rules of section 954(b)(5) and paragraph (c) of this section.

(5) *Adjusted net foreign base company income.* The term *adjusted net foreign base company income* means the net foreign base company income of a controlled foreign corporation reduced, first, by any items of net foreign base company income excluded from subpart F income pursuant to section 952(c) and, second, by any items excluded from subpart F income pursuant to the high tax exception of section 954(b). See paragraph (d)(4)(ii) of this section. The term *foreign base company income* as used in the Internal Revenue Code and elsewhere in the Income Tax Regulations means adjusted net foreign base company income, unless otherwise provided.

(6) *Insurance income.* The term *gross insurance income* includes all gross income taken into account in determining insurance income under section 953. The term *adjusted gross insurance income* means gross insurance income as adjusted by the de minimis and full inclusion rules of paragraph (b) of this section. The term *net insurance income* means adjusted gross insurance income reduced under section 953 so as to take into account deductions (including taxes) properly allocable or apportionable to such income. The term *adjusted net insurance income* means net insurance income reduced by any items of net insurance income that are excluded from subpart F income pursuant to section 952(b) or pursuant to the high tax exception of section 954(b). The term *insurance income* as used in subpart F of the Internal Revenue Code and in the regulations under that subpart means adjusted net insurance income, unless otherwise provided.

(7) *Additional items of adjusted net foreign base company income or adjusted net insurance income by reason of section 952(c).* Earnings and profits of the controlled foreign corporation that are recharacterized as foreign base company income or insurance income under section 952(c) are items of adjusted net foreign base company income or adjusted net insurance income, respectively. Amounts subject to recharacterization under section 952(c) are determined after adjusted net foreign base company income and adjusted net insurance income are otherwise determined under subpart F and are not again subject to any exceptions or special rules that would affect the amount of subpart F income. Thus, for example, items of gross foreign base company income or gross insurance income that are excluded from adjusted gross foreign base company income or adjusted gross insurance income because the de minimis test is met are subject to recharacterization under section 952(c). Further, the de minimis and full inclusion tests of paragraph (b) of this section, and the high tax exception of paragraph (d) of this section, for example, do not apply to such amounts.

(b) *Computation of adjusted gross foreign base company income and adjusted gross insurance income*—(1) *De minimis and full inclusion tests*—(i) *De minimis test*—(A) *In general.* Except as provided in paragraph (b)(1)(i)(C) of this section, adjusted gross foreign base company income and adjusted gross insurance income are equal to zero if the sum of the gross foreign base company income and the gross insurance income of a controlled foreign corporation is less than the lesser of—

(*1*) 5 percent of gross income; or

(*2*) $1,000,000.

(B) *Currency translation.* Controlled foreign corporations having a functional currency other than the United States dollar shall translate the $1,000,000 threshold using the exchange rate provided under section 989(b)(3) for amounts included in income under section 951(a).

(C) *Coordination with sections 864(d) and 881(c).* Adjusted gross foreign base company income or adjusted gross insurance income of a controlled foreign corporation always includes income from trade or service receivables described in section 864(d) (1) or (6), and portfolio interest described in section 881(c), even if the de minimis test of this paragraph (b)(1)(i) is otherwise satisfied.

(ii) *Seventy percent full inclusion test.* Except as provided in section 953, adjusted gross foreign base company income consists of all gross income of the controlled foreign corporation other than gross insurance income and amounts described in section 952(b), and adjusted gross insurance income consists of all gross insurance income other than amounts described in section 952(b), if the sum of the gross foreign base company income and the gross insurance income for the taxable year exceeds 70 percent of gross income. See paragraph (d)(6) of this section, under which certain items of full inclusion foreign base company income may nevertheless be excluded from subpart F income.

(2) *Character of gross income included in adjusted gross foreign base company income.* The gross income included in the adjusted gross foreign base company income of a controlled foreign corporation generally retains its character as foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income, or foreign base company oil related income. However, gross income included in adjusted gross foreign base company income because the full inclusion test of paragraph (b)(1)(ii) of this section is met is termed *full inclusion foreign base company income,* and constitutes a separate category of adjusted gross foreign base company income for purposes of allocating and apportioning deductions under paragraph (c) of this section.

(3) *Coordination with section 952(c).* Income that is included in subpart F income because the full inclusion test of paragraph (b)(1)(ii) of this section is met does not reduce amounts that, under section 952(c), are subject to recharacterization.

(4) *Anti-abuse rule*—(i) *In general.* For purposes of applying the de minimis test of paragraph (b)(1)(i) of this section, the income of two or more controlled foreign corporations shall be aggregated and treated as the income of a single corporation if a principal purpose for separately organizing, acquiring, or maintaining such multiple corporations is to prevent income from being treated as foreign base company income or insurance income under the de minimis test. A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately).

(ii) *Presumption.* Two or more controlled foreign corporations are presumed to have been organized, acquired or maintained to prevent income from being treated as foreign

base company income or insurance income under the de minimis test of paragraph (b)(1)(i) of this section if the corporations are related persons, as defined in paragraph (b)(4)(iii) of this section, and the corporations are described in paragraph (b)(4)(ii)(A), (B), or (C) of this section. This presumption may be rebutted by proof to the contrary.

(A) The activities carried on by the controlled foreign corporations, or the assets used in those activities, are substantially the same activities that were previously carried on, or assets that were previously held, by a single controlled foreign corporation. Further, the United States shareholders of the controlled foreign corporations or related persons (as determined under paragraph (b)(4)(iii) of this section) are substantially the same as the United States shareholders of the one controlled foreign corporation in a prior taxable year. A presumption made in connection with the requirements of this paragraph (b)(4)(ii)(A) may be rebutted by proof that the activities carried on by each controlled foreign corporation would constitute a separate branch under the principles of § 1.367(a)–6T(g)(2) if carried on directly by a United States person.

(B) The controlled foreign corporations carry on a business, financial operation, or venture as partners directly or indirectly in a partnership (as defined in section 7701(a)(2) and § 301.7701–3 of this chapter) that is a related person (as defined in paragraph (b)(4)(iii) of this section) with respect to each such controlled foreign corporation.

(C) The activities carried on by the controlled foreign corporations would constitute a single branch operation under § 1.367(a)–6T(g)(2) if carried on directly by a United States person.

(iii) *Related persons.* For purposes of this paragraph (b), two or more persons are related persons if they are in a relationship described in section 267(b). In determining for purposes of this paragraph (b) whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). In determining for purposes of this paragraph (b) whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

(iv) *Example.* The following example illustrates the application of this paragraph (b)(4).

Example. (i)(1) *USP* is the sole United States shareholder of three controlled foreign corporations: *CFC1, CFC2* and *CFC3.* The three controlled foreign corporations all have the same taxable year. The three controlled foreign corporations are partners in *FP,* a foreign entity classified as a partnership under section 7701(a)(2) and § 301.7701–3 of the regulations. For their current taxable years, each of the controlled foreign corporations derives all of its income other than foreign base company income from activities conducted through *FP,* and its foreign base company income from activities conducted both jointly through *FP* and separately without *FP.* Based on the facts in the table below, the foreign base company income derived by each controlled foreign corporation for its current taxable year, including income derived from *FP,* is less than five percent of the gross income of each controlled foreign corporation and is less than $1,000,000:

	CFC1	CFC2	CFC3
Gross income	$4,000,000	$8,000,000	$12,000,000
Five percent of gross income	200,000	400,000	600,000
Foreign base company income	199,000	398,000	597,000

(2) Thus, without the application of the anti-abuse rule of this paragraph (b)(4), each controlled foreign corporation would be treated as having no foreign base company income after the application of the de minimis test of section 954(b)(3)(A) and paragraph (b)(1)(i) of this section.

(ii) However, under these facts, the requirements of paragraph (b)(4)(i) of this section are met unless the presumption of paragraph (b)(4)(ii) of this section is successfully rebutted. The sum of the foreign base company income of the controlled foreign corporations is $1,194,000. Thus, the amount of gross foreign base company income of each controlled foreign corporation will not be reduced by reason of the de minimis rule of section 954(b)(3)(A) and this paragraph (b).

(c) *Computation of net foreign base company income*—(1) *General rule.* The net foreign base company income of a controlled foreign corporation (as defined in paragraph (a)(4) of this section) is computed under the rules of this paragraph (c)(1). The principles of § 1.904–5(k) shall apply where payments are made between controlled foreign corporations that are related persons (within the meaning of section 954(d)(3)). Consistent with these principles, only payments described in § 1.954–2(b)(4)(ii)(B)(*2*) may be offset as provided in § 1.904–5(k)(2).

(i) *Deductions against gross foreign base company income.* The net foreign base company income of a controlled foreign corporation is computed first by taking into account deductions in the following manner:

(A) First, the gross amount of each item of income described in paragraph (c)(1)(iii) of this section is determined.

(B) Second, any expenses definitely related to less than all gross income as a class shall be allocated and apportioned under the principles of sections 861, 864 and 904(d) to the gross income described in paragraph (c)(1)(i)(A) of this section.

(C) Third, foreign personal holding company income that is passive within the meaning of section 904 (determined before the application of the high-taxed income rule of § 1.904–4(c)) is reduced by related person interest expense allocable to passive income under § 1.904–5(c)(2); such interest must be further allocated and apportioned to items described in paragraph (c)(1)(iii)(B) of this section.

(D) Fourth, the amount of each item of income described in paragraph (c)(1)(iii) of this section is reduced by other expenses allocable and apportionable to such income under the principles of sections 861, 864 and 904(d).

(ii) *Losses reduce subpart F income by operation of earnings and profits limitation.* Except as otherwise provided in § 1.954–2(g)(4), if after applying the rules of paragraph (c)(1)(i) of this section, the amount remaining in any category of foreign base company income or foreign personal holding company income is less than zero, the loss in that category may not reduce any other category of foreign base company income or foreign personal holding company income except by operation of the earnings and profits limitation of section 952(c)(1).

(iii) *Items of income*—(A) *Income other than passive foreign personal holding company income.* A single item of income (other than foreign personal holding company income that is

passive) is the aggregate amount from all transactions that falls within a single separate category (as defined in § 1.904–5(a)(1)), and either—

(*1*) Falls within a single category of foreign personal holding company income as—

(*i*) Dividends, interest, rents, royalties and annuities;

(*ii*) Gain from certain property transactions;

(*iii*) Gain from commodities transactions;

(*iv*) Foreign currency gain; or

(*v*) Income equivalent to interest; or

(*2*) Falls within a single category of foreign base company income, other than foreign personal holding company income, as—

(*i*) Foreign base company sales income;

(*ii*) Foreign base company services income;

(*iii*) Foreign base company shipping income;

(*iv*) Foreign base company oil related income; or

(*v*) Full inclusion foreign base company income.

(B) *Passive foreign personal holding company income.* A single item of foreign personal holding company income that is passive is an amount of income that falls within a single group of passive income under the grouping rules of § 1.904–4(c) (3), (4) and (5) and a single category of foreign personal holding company income described in paragraphs (c)(1)(iii)(A)(*1*) (*i*) through (*v*).

(2) *Computation of net foreign base company income derived from same country insurance income.* Deductions relating to foreign base company income attributable to the issuing (or reinsuring) of any insurance or annuity contract in connection with risks located in the country under the laws of which the controlled foreign corporation is created or organized shall be allocated and apportioned in accordance with the rules set forth in section 953.

(d) *Computation of adjusted net foreign base company income or adjusted net insurance income*—(1) *Application of high tax exception.* Adjusted net foreign base company income (or adjusted net insurance income) equals the net foreign base company income (or net insurance income) of a controlled foreign corporation, reduced by any net item of such income that qualifies for the high tax exception provided by section 954(b)(4) and this paragraph (d). Any item of income that is foreign base company oil related income, as defined in section 954(g), or portfolio interest, as described in section 881(c), does not qualify for the high tax exception. See paragraph (c)(1)(iii) of this section for the definition of the term *item of income.* For rules concerning the treatment for foreign tax credit purposes of amounts excluded from subpart F under section 954(b)(4), see § 1.904–4(c). A net item of income qualifies for the high tax exception only if—

(i) An election is made under section 954(b)(4) and paragraph (d)(5) of this section to exclude the income from the computation of subpart F income; and

(ii) It is established that the net item of income was subject to foreign income taxes imposed by a foreign country or countries at an effective rate that is greater than 90 percent of the maximum rate of tax specified in section 11 for the taxable year of the controlled foreign corporation.

(2) *Effective rate at which taxes are imposed.* The effective rate with respect to a net item of income shall be determined separately for each controlled foreign corporation in a chain of corporations through which a distribution is made. The effective rate at which taxes are imposed on a net item of income is—

(i) The United States dollar amount of foreign income taxes paid or accrued (or deemed paid or accrued) with respect to the net item of income, determined under paragraph (d)(3) of this section; divided by

(ii) The United States dollar amount of the net item of foreign base company income or insurance income, described in paragraph (c)(1)(iii) of this section, increased by the amount of foreign income taxes referred to in paragraph (d)(2)(i) of this section.

(3) *Taxes paid or accrued with respect to an item of income—(i) Income other than passive foreign personal holding company income.* The amount of foreign income taxes paid or accrued with respect to a net item of income (other than an item of foreign personal holding company income that is passive) for purposes of section 954(b)(4) and this paragraph (d) is the United States dollar amount of foreign income taxes that would be deemed paid under section 960 with respect to that item if that item were included in the gross income of a United States shareholder under section 951(a)(1)(A) (determined, in the case of a United States shareholder that is an individual, as if an election under section 962 has been made, whether or not such election is actually made). For this purpose, in accordance with the regulations under section 960, the amounts that would be deemed paid under section 960 shall be determined separately with respect to each controlled foreign corporation and without regard to the limitation applicable under section 904(a). The amount of foreign income taxes paid or accrued with respect to a net item of income, determined in the manner provided in this paragraph (d), will not be affected by a subsequent reduction in foreign income taxes attributable to a distribution to shareholders of all or part of such income.

(ii) *Passive foreign personal holding company income.* The amount of income taxes paid or accrued with respect to a net item of foreign personal holding company income that is passive for purposes of section 954(b)(4) and this paragraph (d) is the United States dollar amount of foreign income taxes that would be deemed paid under section 960 and that would be taken into account for purposes applying the provisions of § 1.904–4(c) with respect to that net item of income.

(4) *Special rules*—(i) *Consistency rule.* An election to exclude income from the computation of subpart F income for a taxable year must be made consistently with respect to all items of passive foreign personal holding company income eligible to be excluded for the taxable year. Thus, high-taxed passive foreign personal holding company income of a controlled foreign corporation must either be excluded in its entirety, or remain subject to subpart F in its entirety.

(ii) *Coordination with earnings and profits limitation.* If the amount of income included in subpart F income for the taxable year is reduced by the earnings and profits limitation of section 952(c)(1), the amount of income that is a net item of income, within the meaning of paragraph (c)(1)(iii) of this section, is determined after the application of the rules of section 952(c)(1).

(iii) *Example.* The following example illustrates the provisions of paragraph (d)(4)(ii) of this section. All of the taxes referred to in the following example are foreign income taxes. For simplicity, this example assumes that the amount of taxes that are taken into account as a deduction under section 954(b)(5) and the amount of the gross-up required under sections 960 and 78 are equal. Therefore, this example does not separately illustrate the deduction for taxes and gross-up.

Example. During its 1995 taxable year, *CFC*, a controlled foreign corporation, earns $100 of royalty income that is foreign personal holding company income. *CFC* has no expenses associated with this royalty income. *CFC* pays $20 of foreign income taxes with respect to the royalty income. For 1995, *CFC* has current earnings and profits of $50. *CFC*'s subpart F income, as determined

prior to the application of this paragraph (d), exceeds its current earnings and profits. Thus, under paragraph (d)(4)(ii) of this section, the amount of *CFC*'s only net item of income, the royalty income, will be limited to $50. The remaining $50 will be subject to recharacterization in a subsequent taxable year under section 952(c)(2). Because the amount of foreign income taxes paid with respect to this net item of income is $20, the effective rate of tax on the item, for purposes of this paragraph (d), is 40 percent. Accordingly, an election under paragraph (d)(5) of this section may be made to exclude the item of income from the computation of subpart F income.

(5) *Procedure.* An election made under the procedure provided by this paragraph (d)(5) is binding on all United States shareholders of the controlled foreign corporation and must be made—

(i) By the controlling United States shareholders, as defined in § 1.964–1(c)(5), by attaching a statement to such effect with their original or amended income tax returns, and including any additional information required by applicable administrative pronouncements; or

(ii) In such other manner as may be prescribed in applicable administrative pronouncements.

(6) *Coordination of full inclusion and high tax exception rules.* Notwithstanding paragraph (b)(1)(ii) of this section, full inclusion foreign base company income will be excluded from subpart F income if more than 90 percent of the adjusted gross foreign base company income and adjusted gross insurance company income of a controlled foreign corporation (determined without regard to the full inclusion test of paragraph (b)(1) of this section) is attributable to net amounts excluded from subpart F income pursuant to an election to have the high tax exception described in section 954(b)(4) and this paragraph (d) apply.

(7) *Examples.* (i) The following examples illustrate the rules of this paragraph (d). All of the taxes referred to in the following examples are foreign income taxes. For simplicity, these examples assume that the amount of taxes that are taken into account as a deduction under section 954(b)(5) and the amount of the gross-up required under sections 960 and 78 are equal. Therefore, these examples do not separately illustrate the deduction for taxes and gross-up. Except as otherwise stated, these examples assume there are no earnings, deficits, or foreign income taxes in the post-1986 pools of earnings and profits or foreign income taxes.

Example 1. (i) *Items of income.* During its 1995 taxable year, controlled foreign corporation *CFC* earns from outside its country of operation portfolio dividend income of $100 and interest income, net of taxes, of $100 (consisting of a gross payment of $150 reduced by a third-country withholding tax of $50). For purposes of illustration, assume that *CFC* incurs no expenses. None of the income is taxed in *CFC*'s country of operation. The dividend income was not subject to third-country withholding taxes. Pursuant to the operation of section 904, the interest income is high withholding tax interest and the dividend income is passive income. Accordingly, pursuant to paragraph (c)(1)(iii) of this section, *CFC* has two net items of income—

(1) $100 of foreign personal holding company (FPHC)/passive income (the dividends); and

(2) $100 of FPHC/high withholding tax income (the interest).

(ii) *Effective rates of tax.* No foreign tax would be deemed paid under section 960 with respect to the net item of income described in paragraph (i)(1) of this *Example 1.* Therefore, the effective rate of foreign tax is 0, and the item may not be excluded from subpart F under the rules of this paragraph (d). Foreign tax of $50 would be deemed paid under section 960 with respect to the net item of income described in paragraph (i)(2) of this *Example 1.* Therefore, the effective rate of foreign tax is 33 percent ($50 of creditable taxes paid, divided by $150, consisting of the net item of foreign base company income ($100) plus creditable taxes paid thereon ($50)). The highest rate of tax specified in section 11 for the 1995 taxable year is 34 percent. Accordingly, the net item of income described in paragraph (i)(2) of this *Example 1* may be excluded from subpart F income if an election under paragraph (d)(5) of this section is made, since it is subject to foreign tax at an effective rate that is greater than 30.6 percent (90 percent of 34 percent). However, for purposes of section 904(d), it remains high withholding tax interest.

Example 2. (i) The facts are the same as in *Example 1,* except that *CFC*'s country of operation imposes a tax of $50 with respect to *CFC*'s dividend income (and thus *CFC* earns portfolio dividend income, net of taxes, of only $50). The interest income is still high withholding tax interest. The dividend income is still passive income (without regard to the possible applicability of the high tax exception of section 904(d)(2)). Accordingly, *CFC* has two items of income for purposes of this paragraph (d)—

(1) $50 of FPHC/passive income (net of the $50 foreign tax); and

(2) $100 of FPHC/high withholding tax interest income.

(ii) Each item is taxed at an effective rate greater than 30.6 percent. The net item of income described in paragraph (i)(1) of this *Example 2*: foreign tax ($50) divided by sum ($100) of net item of income ($50) plus creditable tax thereon ($50) equals 50 percent. The net item of income described in paragraph (i)(2) of this *Example 2*: foreign tax ($50) divided by sum ($150) of income item ($100) plus creditable tax thereon ($50) equals 33 percent. Accordingly, an election may be made under paragraph (d)(5) of this section to exclude either or both of the net items of income described in paragraphs (i)(1) and (2) of this *Example 2* from subpart F income. If no election is made the items would be included in the subpart F income of *CFC.*

Example 3. (i) The facts are the same as in *Example 1,* except that the $100 of portfolio dividend income is subject to a third-country withholding tax of $50, and the $150 of interest income is from sources within *CFC's* country of operation, is subject to a $10 income tax therein, and is not subject to a withholding tax. Although the interest income and the dividend income are both passive income, under paragraph (c)(1)(iii)(B) of this section they constitute separate items of income pursuant to the application of the grouping rules of § 1.904–4(c). Accordingly, *CFC* has two net items of income for purposes of this paragraph (d)—

(1) $50 (net of $50 tax) of FPHC/non-country of operation/greater than 15 percent withholding tax income; and

(2) $140 (net of $10 tax) of FPHC/country of operation income.

(ii) The item described in paragraph (i)(1) of this *Example 3* is taxed at an effective rate greater than 30.6 percent, but Item 2 is not. The net item of income described in paragraph (i)(1) of this *Example 3:* Foreign tax ($50) divided by sum ($100) of net item of income ($50) plus creditable tax thereon ($50) equals 50 percent. The net item of income described in paragraph (i)(2) of this *Example 3:* Foreign tax ($10) divided by sum ($150) of net item of income ($140) plus creditable tax thereon ($10) equals 6.67 percent. Therefore, an election may be made under paragraph (d)(5) of this section to exclude the net item of income described in paragraph (i)(1) of this *Example 3* but not the net item of income described in paragraph (i)(2) of this *Example 3* from subpart F income.

Example 4. The facts are the same as in *Example 3,* except that the $150 of interest income is subject to an income tax of $50 in *CFC*'s country of operation. Accordingly, *CFC*'s items of income are the same as in Example 3, but both items are taxed at an effective rate greater than 30.6 percent. The net item of income described in paragraph (i)(1) of *Example 3*: Foreign tax ($50) divided by sum ($100) of net item of income ($50) plus creditable tax thereon ($50) equals 50 percent. The net item of income described in paragraph (i)(2) of *Example 3*: Foreign tax ($50) divided by sum ($150) of net item of income ($100) plus creditable tax thereon ($50) equals 33 percent. Pursuant to the consistency rule of paragraph (d)(4)(i) of this section, an election made by *CFC*'s controlling United States shareholders must exclude from subpart F income both items of FPHC income under the high tax exception of section 954(b)(4) and this paragraph (d). The election may not be made only with respect to one item.

Example 5. The facts are the same as in *Example 1,* except that *CFC* earns $5 of portfolio dividend income and $150 of interest income. In addition, *CFC* earns $45 for performing consulting services within its country of operation for unrelated persons. *CFC*'s gross foreign base company income for 1995 of $155 ($150 of gross interest income and $5 of portfolio dividend income) is

greater than 70 percent of its gross income of $200. Therefore, under the full inclusion test of paragraph (b)(1)(ii) of this section, *CFC*'s adjusted gross foreign base company income is $200, and under paragraph (b)(2) of this section, the $45 of consulting income is full inclusion foreign base company income. If *CFC* elects, under paragraph (d)(5) of this section, to exclude the interest income from subpart F income pursuant to the high tax exception, the $45 of full inclusion foreign base company income will be excluded from subpart F income under paragraph (d)(6) of this section because the $150 of gross interest income excluded under the high tax exception is more than 90 percent of *CFC*'s adjusted gross foreign base company income of $155.

(ii) The following examples generally illustrate the application of paragraph (c) of this section and this paragraph (d). *Example 1* illustrates the order of computations. *Example 2* illustrates the computations required by sections 952 and 954 and this § 1.954–1 if the full inclusion test of paragraph (b)(1)(ii) of this section is met and the income is not excluded from subpart F income under section 952(b). Computations in these examples involving the operation of section 952(c) are included for purposes of illustration only and do not provide substantive rules concerning the operation of that section. For simplicity, these examples assume that the amount of taxes that are taken into account as a deduction under section 954(b)(5) and the amount of the gross-up required under sections 960 and 78 are equal. Therefore, these examples do not separately illustrate the deduction for taxes and gross-up.

Example 1. (i) *Gross income. CFC*, a controlled foreign corporation, has gross income of $1000 for the current taxable year. Of that $1000 of income, $100 is interest income that is included in the definition of foreign personal holding company income under section 954(c)(1)(A) and § 1.954–2(b)(1)(ii), is not income from a trade or service receivable described in section 864(d)(1) or (6), or portfolio interest described in section 881(c), and is not excluded from foreign personal holding company income under any provision of section 952(b) or section 954(c). Another $50 is foreign base company sales income under section 954(d). The remaining $850 of gross income is not included in the definition of foreign base company income or insurance income under sections 954 (c), (d), (e), (f) or (g) or 953, and is foreign source general limitation income described in section 904(d)(1)(I).

(ii) *Expenses.* For the current taxable year, *CFC* has expenses of $500. This amount includes $8 of interest paid to a related person that is allocable to foreign personal holding company income under section 904, and $2 of other expense that is directly related to foreign personal holding company income. Another $20 of expense is directly related to foreign base company sales. The remaining $470 of expenses is allocable to general limitation income that is not foreign base company income or insurance income.

(iii) *Earnings and losses. CFC* has earnings and profits for the current taxable year of $500. In the prior taxable year, *CFC* had losses with respect to income other than gross foreign base company income or gross insurance income. By reason of the limitation provided under section 952(c)(1)(A), those losses reduced the subpart F income (consisting entirely of foreign source general limitation income) of *CFC* by $600 for the prior taxable year.

(iv) *Taxes.* Foreign income tax of $30 is considered imposed on the interest income under the rules of section 954(b)(4), this paragraph (d), and § 1.904–6. Foreign income tax of $14 is considered imposed on the foreign base company sales income under the rules of section 954(b)(4), paragraph (d) of this section, and § 1.904–6. Foreign income tax of $177 is considered imposed on the remaining foreign source general limitation income under the rules of section 954(b)(4), this paragraph (d), and § 1.904–6. For the taxable year of *CFC*, the maximum United States rate of taxation under section 11 is 34 percent.

(v) *Conclusion.* Based on these facts, if CFC elects to exclude all items of income subject to a high foreign tax under section 954(b)(4) and this paragraph (d), it will have $500 of subpart F income as defined in section 952(a) (consisting entirely of foreign source general limitation income) determined as follows:

Step 1—Determine gross income:	
(1) Gross income	$1000
Step 2—Determine gross foreign base company income and gross insurance income:	
(2) Interest income included in gross foreign personal holding company income under section 954(c)	100
(3) Gross foreign base company sales income under section 954(d)	50
(4) Total gross foreign base company income and gross insurance income as defined in sections 954 (c), (d), (e), (f) and (g) and 953 (line (2) plus line (3))	150
Step 3—Compute adjusted gross foreign base company income and adjusted gross insurance income:	
(5) Five percent of gross income (.05 × line (1))	50
(6) Seventy percent of gross income (.70 × line (1))	700
(7) Adjusted gross foreign base company income and adjusted gross insurance income after the application of the de minimis test of paragraph (b) (line (4), or zero if line (4) is less than the lesser of line (5) or $1,000,000) (if the amount on this line 7 is zero, proceed to Step 8)	150
(8) Adjusted gross foreign base company income and adjusted gross insurance income after the application of the full inclusion test of paragraph (b) (line (4), or line (1) if line (4) is greater than line (6))	150
Step 4—Compute net foreign base company income:	
(9) Expenses directly related to adjusted gross foreign base company sales income	20
(10) Expenses (other than related person interest expense) directly related to adjusted gross foreign personal holding company income	2
(11) Related person interest expense allocable to adjusted gross foreign personal holding company income under section 904	8
(12) Net foreign personal holding company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (2) reduced by lines (10) and (11))	90
(13) Net foreign base company sales income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (3) reduced by line (9))	30
(14) Total net foreign base company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (12) plus line (13))	120
Step 5—Compute net insurance income:	
(15) Net insurance income under section 953	0
Step 6—Compute adjusted net foreign base company income:	
(16) Foreign income tax imposed on net foreign personal holding company income (as determined under section 954(b)(4) and this paragraph (d))	30
(17) Foreign income tax imposed on net foreign base company sales income (as determined under section 954(b)(4) and this paragraph (d))	14
(18) Ninety percent of the maximum United States corporate tax rate	30.6%
(19) Effective rate of foreign income tax imposed on net foreign personal holding company income ($90 of interest) under section 954(b)(4) and this paragraph (d) (line (16) divided by line (12))	33%
(20) Effective rate of foreign income tax imposed on $30 of net foreign base company sales income under section 954(b)(4) and this paragraph (d) (line (17) divided by line (13))	47%

(21) Net foreign personal holding company income subject to a high foreign tax under section 954(b)(4) and this paragraph (d) (zero, or line (12) if line (19) is greater than line (18)) ... 90
(22) Net foreign base company sales income subject to a high foreign tax under section 954(b)(4) and this paragraph (d) (zero, or line (13) if line (20) is greater than line (18)) ... 30
(23) Adjusted net foreign base company income after applying section 954(b)(4) and this paragraph (d) (line (14), reduced by the sum of line (21) and line (22)) 0

Step 7—Compute adjusted net insurance income:

(24) Adjusted net insurance income 0

Step 8—Additions to or reduction of adjusted net foreign base company income by reason of section 952(c):

(25) Earnings and profits for the current year 500
(26) Amount subject to being recharacterized as subpart F income under section 952(c)(2) (excess of line (25) over the sum of lines (23) and (24)); if there is a deficit, then the limitation of section 952(c)(1) may apply for the current year 500
(27) Amount of reduction in subpart F income for prior taxable years by reason of the limitation of section 952(c)(1) 600
(28) Subpart F income as defined in section 952(a), assuming section 952(a)(3), (4), and (5) do not apply (the sum of line (23), line (24), and the lesser of line (26) or line (27)) 500
(29) Amount of prior year's deficit to be recharacterized as subpart F income in later years under section 952(c) (excess of line (27) over line (26) 100

Example 2. (i) *Gross income.* CFC, a controlled foreign corporation, has gross income of $1000 for the current taxable year. Of that $1000 of income, $720 is interest income that is included in the definition of foreign personal holding company income under section 954(c) (1)(A) and § 1.954–2(b)(1)(ii), is not income from trade or service receivables described in section 864(d)(1) or (6), or portfolio interest described in section 881(c), and is not excluded from foreign personal holding company income under any provision of section 954(c) and § 1.954–2 or section 952(b). The remaining $280 is services income that is not included in the definition of foreign base company income or insurance income under sections 954 (c), (d), (e), (f), or (g) or 953, and is foreign source general limitation income for purposes of section 904(d)(1)(I).

(ii) *Expenses.* For the current taxable year, *CFC* has expenses of $650. This amount includes $350 of interest paid to related persons that is allocable to foreign personal holding company income under section 904, and $50 of other expense that is directly related to foreign personal holding company income. The remaining $250 of expenses is allocable to services income other than foreign base company income or insurance income.

(iii) *Earnings and losses. CFC* has earnings and profits for the current taxable year of $350. In the prior taxable year, CFC had losses with respect to income other than foreign base company income or insurance income. By reason of the limitation provided under section 952(c)(1)(A), those losses reduced the subpart F income of CFC (consisting entirely of foreign source general limitation income) by $600 for the prior taxable year.

(iv) *Taxes.* Foreign income tax of $120 is considered imposed on the $720 of interest income under the rules of section 954(b)(4), paragraph (d) of this section, and § 1.904–6. Foreign income tax of $2 is considered imposed on the services income under the rules of section 954(b)(4), paragraph (d) of this section, and § 1.904–6. For the taxable year of *CFC*, the maximum United States rate of taxation under section 11 is 34 percent.

(v) *Conclusion.* Based on these facts, if *CFC* elects to exclude all items of income subject to a high foreign tax under section 954(b)(4) and this paragraph (d), it will have $350 of subpart F income as defined in section 952(a), determined as follows.

Step 1—Determine gross income:

(1) Gross income $1000

Step 2—Determine gross foreign base company income and gross insurance income:

(2) Gross foreign base company income and gross insurance income as defined in sections 954 (c), (d), (e), (f) and (g) and 953 (interest income) 720

Step 3—Compute adjusted gross foreign base company income and adjusted gross insurance income:

(3) Seventy percent of gross income (.70 × line (1)) 700
(4) Adjusted gross foreign base company income and adjusted gross insurance income after the application of the full inclusion rule of this paragraph (b)(1) (line (2), or line (1) if line (2) is greater than line (3)) 1000
(5) Full inclusion foreign base company income under paragraph (b)(1)(ii) (line (4) minus line (2)) 280

Step 4—Compute net foreign base company income:

(6) Expenses (other than related person interest expense) directly related to adjusted gross foreign personal holding company income 50
(7) Related person interest expense allocable to adjusted gross foreign personal holding company income under section 904 350
(8) Deductions allocable to full inclusion foreign base company income under section 954(b)(5) and paragraph (c) of this section 250
(9) Net foreign personal holding company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (2) reduced by line (6) and line (7)) 320
(10) Full inclusion foreign base company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (5) reduced by line (8)) 30
(11) Total net foreign base company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (9) plus line (10)) 350

Step 5—Compute net insurance income:

(12) Net insurance income under section 953 0

Step 6—Compute adjusted net foreign base company income:

(13) Foreign income tax imposed on net foreign personal holding company income (interest) 120
(14) Foreign income tax imposed on net full inclusion foreign base company income 2
(15) Ninety percent of the maximum United States corporate tax rate 30.6%
(16) Effective rate of foreign income tax imposed on $320 of net foreign personal holding company income under section 954(b)(4) and this paragraph (d) (line (13) divided by line (9)) 38%
(17) Effective rate of foreign income tax imposed on $30 of net full inclusion foreign base company income under section 954(b)(4) and this paragraph (d) (line (14) divided by line (10)) 7%
(18) Net foreign personal holding company income subject to a high foreign tax under section 954(b)(4) and this paragraph (d) (zero, or line (9) if line (16) is greater than line (15)) 320
(19) Net full inclusion foreign base company income subject to a high foreign tax under section 954(b)(4) and this paragraph (d) (zero, or line (10) if line (17) is greater than line (15)) 0
(20) Adjusted net foreign base company income after applying section 954(b)(4) and this paragraph (d) (line (11) reduced by the sum of line (18) and line (19)) 30

Step 7—Compute adjusted net insurance income:

(21) Adjusted net insurance income 0

Step 8—Reduction of adjusted net foreign base company income or adjusted net insurance income by reason of paragraph (d)(6) of this section:

(22) Adjusted gross foreign base company income and adjusted gross insurance income (determined without regard to the full inclusion test of paragraph (b)(1) of this section) (line (4) reduced by line (5)) 720

(23) Ninety percent of adjusted gross foreign base company income and adjusted gross insurance income (determined without regard to the full inclusion test of paragraph (b)(1)(ii) of this section) (90% of the amount on line (22)) 648

(24) Net foreign base company income and net insurance income excluded from subpart F income under section 954(b)(4), increased by the amount of expenses that reduced this income under section 954(b)(5) and paragraph (c) of this section (line (18) increased by the sum of line (6) and line (7)) 720

(25) Adjusted net full inclusion foreign base company income excluded from subpart F income under paragraph (d)(6) of this section (zero, or line (10) reduced by line (19) if line (24) is greater than line (23)) 30

(26) Adjusted net foreign base company income after application of paragraph (d)(6) of this section (line (20) reduced by line (25)) 0

Step 9—Additions to or reduction of subpart F income by reason of section 952(c):

(27) Earnings and profits for the current year 350

(28) Amount subject to being recharacterized as subpart F income under section 952(c)(2) (excess of line (27) over the sum of line (21) and line (26)); if there is a deficit, then the limitation of 952(c)(1) may apply for the current year 350

(29) Amount of reduction in subpart F income for prior taxable years by reason of the limitation of section 952(c)(1) 600

(30) Subpart F income as defined in section 952(a), assuming section 952(a) (3), (4), and (5) do not apply (the sum of line (21) and line (26) plus the lesser of line (28) or line (29)) 350

(31) Amount of prior years' deficit remaining to be recharacterized as subpart F income in later years under section 952(c) (excess of line (29) over line (28)) 250

(e) *Character of income*—(1) *Substance of the transaction.* For purposes of section 954, income shall be characterized in accordance with the substance of the transaction, and not in accordance with the designation applied by the parties to the transaction. For example, an amount that is designated as rent by the taxpayer but actually constitutes income from the sale of property, royalties, or income from services shall not be characterized as rent but shall be characterized as income from the sale of property, royalties or income from services, as the case may be. Local law shall not be controlling in characterizing income.

(2) *Separable character.* To the extent the definitional provisions of section 953 or 954 describe the income or gain derived from a transaction, or any portion or portions thereof, that income or gain, or portion or portions thereof, is so characterized for purposes of subpart F. Thus, a single transaction may give rise to income in more than one category of foreign base company income described in paragraph (a)(2) of this section. For example, if a controlled foreign corporation, in its business of purchasing personal property and selling it to related persons outside its country of incorporation, also performs services outside its country of incorporation with respect to the property it sells, the sales income will be treated as foreign base company sales income and the services income will be treated as foreign base company services income for purposes of these rules.

(3) *Predominant character.* The portion of income or gain derived from a transaction that is included in the computation of foreign personal holding company income is always separately determinable and thus must always be segregated from other income and separately classified under paragraph (e)(2) of this section. However, the portion of income or gain derived from a transaction that would meet a particular definitional provision under section 954 or 953 (other than the definition of foreign personal holding company income) in unusual circumstances may not be separately determinable. If such portion is not separately determinable, it must be classified in accordance with the predominant character of the transaction. For example, if a controlled foreign corporation engineers, fabricates, and installs a fixed offshore drilling platform as part of an integrated transaction, and the portion of income that relates to services is not accounted for separately from the portion that relates to sales, and is otherwise not separately determinable, then the classification of income from the transaction shall be made in accordance with the predominant character of the arrangement.

(4) *Coordination of categories of gross foreign base company income or gross insurance income*—(i) *In general.* The computations of gross foreign base company income and gross insurance income are limited by the following rules:

(A) If income is foreign base company shipping income, pursuant to section 954(f), it shall not be considered insurance income or income in any other category of foreign base company income.

(B) If income is foreign base company oil related income, pursuant to section 954(g), it shall not be considered insurance income or income in any other category of foreign base company income, except as provided in paragraph (e)(4)(i)(A) of this section.

(C) If income is insurance income, pursuant to section 953, it shall not be considered income in any category of foreign base company income except as provided in paragraph (e)(4)(i) (A) or (B) of this section.

(D) If income is foreign personal holding company income, pursuant to section 954(c), it shall not be considered income in any other category of foreign base company income, other than as provided in paragraph (e)(4)(i) (A), (B) or (C) of this section.

(ii) Income excluded from other categories of gross foreign base company income. Income shall not be excluded from a category of gross foreign base company income or gross insurance income under this paragraph (e)(4) by reason of being included in another category of gross foreign base company income or gross insurance income, if the income is excluded from that other category by a more specific provision of section 953 or 954. For example, income derived from a commodity transaction that is excluded from foreign personal holding company income under § 1.954–2(f) as income from a qualified active sale may be included in gross foreign base company income if it also meets the definition of foreign base company sales income. See § 1.954–2(a)(2) for the coordination of overlapping categories within the definition of foreign personal holding company income.

(f) *Definition of related person*—(1) *Persons related to controlled foreign corporation.* Unless otherwise provided, for purposes of section 954 and §§ 1.954–1 through 1.954–8 inclusive, the following persons are considered under section 954(d)(3) to be related persons with respect to a controlled foreign corporation:

(i) *Individuals.* An individual, whether or not a citizen or resident of the United States, who controls the controlled foreign corporation.

(ii) *Other persons.* A foreign or domestic corporation, partnership, trust or estate that controls or is controlled by the controlled foreign corporation, or is controlled by the same person or persons that control the controlled foreign corporation.

(2) *Control*—(i) *Corporations.* With respect to a corporation, control means the ownership, directly or indirectly, of stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or of the total value of the stock of the corporation.

(ii) *Partnerships.* With respect to a partnership, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the capital or profits interest in the partnership.

(iii) *Trusts and estates.* With respect to a trust or estate, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the beneficial interest in the trust or estate.

(iv) *Direct or indirect ownership.* For purposes of this paragraph (f), to determine direct or indirect ownership, the principles of section 958(a) shall be applied without regard to whether a corporation, partnership, trust or estate is foreign or domestic or whether or not an individual is a citizen or resident of the United States.

§ 1.954–2 Foreign personal holding company income.

(a) *Computation of foreign personal holding company income*—(1) *Categories of foreign personal holding company income.* For purposes of subpart F and the regulations under that subpart, foreign personal holding company income consists of the following categories of income—

(i) Dividends, interest, rents, royalties, and annuities as described in paragraph (b) of this section;

(ii) Gain from certain property transactions as described in paragraph (e) of this section;

(iii) Gain from commodities transactions as described in paragraph (f) of this section;

(iv) Foreign currency gain as described in paragraph (g) of this section; and

(v) Income equivalent to interest as described in paragraph (h) of this section.

(2) *Coordination of overlapping categories under foreign personal holding company provisions*—(i) *In general.* If any portion of income, gain or loss from a transaction is described in more than one category of foreign personal holding company income (as described in paragraph (a)(2)(ii) of this section), that portion of income, gain or loss is treated solely as income, gain or loss from the category of foreign personal holding company income with the highest priority.

(ii) *Priority of categories.* The categories of foreign personal holding company income, listed from highest priority (paragraph (a)(2)(ii)(A) of this section) to lowest priority (paragraph (a)(2)(ii)(E) of this section), are—

(A) Dividends, interest, rents, royalties, and annuities, as described in paragraph (b) of this section;

(B) Income equivalent to interest, as described in paragraph (h) of this section without regard to the exceptions in paragraph (h)(1)(ii)(A) of this section;

(C) Foreign currency gain or loss, as described in paragraph (g) of this section without regard to the exclusion in paragraph (g)(2)(ii) of this section;

(D) Gain or loss from commodities transactions, as described in paragraph (f) of this section without regard to the exclusion in paragraph (f)(1)(ii) of this section; and

(E) Gain or loss from certain property transactions, as described in paragraph (e) of this section without regard to the exceptions in paragraph (e)(1)(ii) of this section.

(3) *Changes in the use or purpose for which property is held*—(i) *In general.* Under paragraphs (e), (f), (g) and (h) of this section, transactions in certain property give rise to gain or loss included in the computation of foreign personal holding company income if the controlled foreign corporation holds that property for a particular use or purpose. The use or purpose for which property is held is that use or purpose for which it was held for more than one-half of the period during which the controlled foreign corporation held the property prior to the disposition.

(ii) *Special rules*—(A) *Anti-abuse rule.* If a principal purpose of a change in use or purpose of property was to avoid including gain or loss in the computation of foreign personal holding company income, all the gain or loss from the disposition of the property is treated as foreign personal holding company income. A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately).

(B) *Hedging transactions.* The provisions of paragraph (a)(3)(i) of this section shall not apply to bona fide hedging transactions, as defined in paragraph (a)(4)(ii) of this section. A transaction will be treated as a bona fide hedging transaction only so long as it satisfies the requirements of paragraph (a)(4)(ii) of this section.

(iii) *Example.* The following example illustrates the application of this paragraph (a)(3).

Example. At the beginning of taxable year 1, *CFC*, a controlled foreign corporation, purchases a building for investment. During taxable years 1 and 2, *CFC* derives rents from the building that are included in the computation of foreign personal holding company income under paragraph (b)(1)(iii) of this section. At the beginning of taxable year 3, *CFC* changes the use of the building by terminating all leases and using it in an active trade or business. At the beginning of taxable year 4, *CFC* sells the building at a gain. The building was not used in an active trade or business of *CFC* for more than one-half of the period during which it was held by *CFC*. Therefore, the building is considered to be property that gives rise to rents, as described in paragraph (e)(2) of this section, and gain from the sale is included in the computation of *CFC*'s foreign personal holding company income under paragraph (e) of this section.

(4) *Definitions and special rules.* The following definitions and special rules apply for purposes of computing foreign personal holding company income under this section.

(i) *Interest.* The term *interest* includes all amounts that are treated as interest income (including interest on a tax-exempt obligation) by reason of the Internal Revenue Code or Income Tax Regulations or any other provision of law. For example, interest includes stated interest, acquisition discount, original issue discount, de minimis original issue discount, market discount, de minimis market discount, and unstated interest, as adjusted by any amortizable bond premium or acquisition premium.

(ii) *Bona fide hedging transaction*—(A) *Definition.* The term *bona fide hedging transaction* means a transaction that meets the requirements of § 1.1221–2 (a) through (c) and that is identified in accordance with the requirements of paragraph (a)(4)(ii)(B) of this section, except that in applying § 1.1221–2(b)(1), the risk being hedged may be with respect to ordinary property, section 1231 property, or a section 988 transaction. A transaction that hedges the liabilities, inventory or other assets of a related person (as defined in section 954(d)(3)), that is entered into to assume or reduce risks of a related person, or that is entered into by a person other than a person acting in its capacity as a regular dealer (as defined in paragraph (a)(4)(iv) of this section) to reduce risks assumed from a related person, will not be treated as a bona fide hedging transaction. For an illustration of how this rule applies with respect to foreign

currency transactions, see paragraph (g)(2)(ii)(D) of this section.

(B) *Identification.* The identification requirements of this section shall be satisfied if the taxpayer meets the identification and recordkeeping requirements of § 1.1221–2(e). However, for bona fide hedging transactions entered into prior to March 7, 1996 the identification and recordkeeping requirements of § 1.1221–2 shall not apply. Rather, for bona fide hedging transactions entered into on or after July 22, 1988 and prior to March 7, 1996 the identification and recordkeeping requirements shall be satisfied if such transactions are identified by the close of the fifth day after the day on which they are entered into. For bona fide hedging transactions entered into prior to July 22, 1988, the identification and recordkeeping requirements shall be satisfied if such transactions are identified reasonably contemporaneously with the date they are entered into, but no later than within the normal period prescribed under the method of accounting of the controlled foreign corporation used for financial reporting purposes.

(C) *Effect of identification and non-identification*—(*1*) *Transactions identified.* If a taxpayer identifies a transaction as a bona fide hedging transaction for purposes of this section, the identification is binding with respect to any loss arising from such transaction whether or not all of the requirements of paragraph (a)(4)(ii)(A) of this section are satisfied. Accordingly, such loss will be allocated against income that is not subpart F income (or, in the case of an election under paragraph (g)(3) of this section, against the category of subpart F income to which it relates) and apportioned among the categories of income described in section 904(d)(1). If the transaction is not in fact a bona fide hedging transaction described in paragraph (a)(4)(ii)(A) of this section, however, then any gain realized with respect to such transaction shall not be considered as gain from a bona fide hedging transaction. Accordingly, such gain shall be treated as gain from the appropriate category of foreign personal holding company income. Thus, the taxpayer's identification of the transaction as a hedging transaction does not itself operate to exclude gain from the appropriate category of foreign personal holding company income.

(*2*) *Inadvertent identification.* Notwithstanding paragraph (a)(4)(ii)(C)(*1*) of this section, if the taxpayer identifies a transaction as a bona fide hedging transaction for purposes of this section, the characterization of the loss is determined as if the transaction had not been identified as a bona fide hedging transaction if—

(*i*) The transaction is not a bona fide hedging transaction (as defined in paragraph (a)(4)(ii)(A) of this section);

(*ii*) The identification of the transaction as a bona fide hedging transaction was due to inadvertent error; and

(*iii*) All of the taxpayer's transactions in all open years are being treated on either original or, if necessary, amended returns in a manner consistent with the principles of this section.

(*3*) *Transactions not identified.* Except as provided in paragraphs (a)(4)(ii)(C)(*4*) and (*5*) of this section, the absence of an identification that satisfies the requirements of paragraph (a)(4)(ii)(B) of this section is binding and establishes that a transaction is not a bona fide hedging transaction. Thus, subject to the exceptions, the characterization of gain or loss is determined without reference to whether the transaction is a bona fide hedging transaction.

(*4*) *Inadvertent error.* If a taxpayer does not make an identification that satisfies the requirements of paragraph (a)(4)(ii)(B) of this section, the taxpayer may treat gain or loss from the transaction as gain or loss from a bona fide hedging transaction if—

(*i*) The transaction is a bona fide hedging transaction (as defined in paragraph (a)(4)(ii)(A) of this section);

(*ii*) The failure to identify the transaction was due to inadvertent error; and

(*iii*) All of the taxpayer's bona fide hedging transactions in all open years are being treated on either original or, if necessary, amended returns as bona fide hedging transactions in accordance with the rules of this section.

(*5*) *Anti-abuse rule.* If a taxpayer does not make an identification that satisfies all the requirements of paragraph (a)(4)(ii)(B) of this section but the taxpayer has no reasonable grounds for treating the transaction as other than a bona fide hedging transaction, then loss from the transaction shall be treated as realized with respect to a bona fide hedging transaction. Thus, a taxpayer may not elect to exclude loss from its proper characterization as a bona fide hedging transaction. The reasonableness of the taxpayer's failure to identify a transaction is determined by taking into consideration not only the requirements of paragraph (a)(4)(ii)(A) of this section but also the taxpayer's treatment of the transaction for financial accounting or other purposes and the taxpayer's identification of similar transactions as hedging transactions.

(iii) *Inventory and similar property*—(A) *Definition.* The term *inventory and similar property* (or *inventory or similar property*) means property that is stock in trade of the controlled foreign corporation or other property of a kind that would properly be included in the inventory of the controlled foreign corporation if on hand at the close of the taxable year (if the controlled foreign corporation were a domestic corporation), or property held by the controlled foreign corporation primarily for sale to customers in the ordinary course of its trade or business.

(B) *Hedging transactions.* A bona fide hedging transaction with respect to inventory or similar property (other than a transaction described in section 988(c)(1) without regard to section 988(c)(1)(D)(i)) shall be treated as a transaction in inventory or similar property.

(iv) *Regular dealer.* The term *regular dealer* means a controlled foreign corporation that—

(A) Regularly and actively offers to, and in fact does, purchase property from and sell property to customers who are not related persons (as defined in section 954(d)(3)) with respect to the controlled foreign corporation in the ordinary course of a trade or business; or

(B) Regularly and actively offers to, and in fact does, enter into, assume, offset, assign or otherwise terminate positions in property with customers who are not related persons (as defined in section 954(d)(3)) with respect to the controlled foreign corporation in the ordinary course of a trade or business.

(v) *Dealer property*—(A) *Definition.* Property held by a controlled foreign corporation is *dealer property* if—

(*1*) The controlled foreign corporation is a regular dealer in property of such kind (determined under paragraph (a)(4)(iv) of this section); and

(*2*) The property is held by the controlled foreign corporation in its capacity as a dealer in property of such kind without regard to whether the property arises from a transaction with a related person (as defined in section 954(d)(3)) with respect to the controlled foreign corporation. The property is not held by the controlled foreign corporation in its capacity as a dealer if the property is held for investment or speculation on its own behalf or on behalf of a related person (as defined in section 954(d)(3)).

(B) *Securities dealers.* If a controlled foreign corporation is a licensed securities dealer, only the securities that it has identified as held for investment in accordance with the provisions of section 475(b) or section 1236 will be

considered to be property held for investment or speculation under this section. A licensed securities dealer is a controlled foreign corporation that is both a securities dealer, as defined in section 475, and a regular dealer, as defined in paragraph (a)(4)(iv) of this section, and that is either—

(*1*) registered as a securities dealer under section 15(a) of the Securities Exchange Act of 1934 or as a Government securities dealer under section 15C(a) of such Act; or

(*2*) licensed or authorized in the country in which it is chartered, incorporated, or organized to purchase and sell securities from or to customers who are residents of that country. The conduct of such securities activities must be subject to bona fide regulation, including appropriate reporting, monitoring, and prudential (including capital adequacy) requirements, by a securities regulatory authority in that country that regularly enforces compliance with such requirements and prudential standards.

(C) *Hedging transactions.* A bona fide hedging transaction with respect to dealer property shall be treated as a transaction in dealer property.

(vi) *Examples.* The following examples illustrate the application of paragraphs (a)(4)(ii), (iv) and (v) of this section.

Example 1. (i) *CFC1* and *CFC2* are related controlled foreign corporations (within the meaning of section 954(d)(3)) located in Countries F and G, respectively. *CFC1* and *CFC2* regularly purchase securities from and sell securities to customers who are not related persons with respect to *CFC1* or *CFC2* (within the meaning of section 954(d)(3)) in the ordinary course of their businesses and regularly and actively hold themselves out as being willing to, and in fact do, enter into either side of options, forward contracts, or other financial instruments. *CFC1* uses securities that are traded in securities markets in Country G to hedge positions that it enters into with customers located in Country F. *CFC1* is not a member of a securities exchange in Country G, so it purchases such securities from *CFC2* and unrelated persons that are registered as securities dealers in Country G and that are members of Country G securities exchanges. Such hedging transactions qualify as bona fide hedging transactions under paragraph (a)(4)(ii) of this section.

(ii) Transactions that *CFC1* and *CFC2* enter into with each other do not affect the determination of whether they are regular dealers. Because *CFC1* and *CFC2* regularly purchase securities from and sell securities to customers who are not related persons within the meaning of section 954(d)(3) in the ordinary course of their businesses and regularly and actively hold themselves out as being willing to, and in fact do, enter into either side of options, forward contracts, or other financial instruments, however, they qualify as regular dealers in such property within the meaning of paragraph (a)(4)(iv) of this section. Moreover, because *CFC1* purchases securities from *CFC2* as bona fide hedging transactions with respect to dealer property, the securities are dealer property under paragraph (a)(4)(v)(C) of this section. Similarly, because *CFC2* sells securities to *CFC1* in the ordinary course of its business as a dealer, the securities are dealer property under paragraph (a)(4)(v)(A) of this section.

Example 2. (i) *CFC* is a controlled foreign corporation located in Country B. *CFC* serves as the currency coordination center for the controlled group, aggregating currency risks incurred by the group and entering into hedging transactions that transfer those risks outside of the group. *CFC* regularly and actively holds itself out as being willing to, and in fact does, enter into either side of options, forward contracts, or other financial instruments with other members of the same controlled group. *CFC* hedges risks arising from such transactions by entering into transactions with persons who are not related persons (within the meaning of section 954(d)(3)) with respect to *CFC*. However, *CFC* does not regularly and actively hold itself out as being willing to, and does not, enter into either side of transactions with unrelated persons.

(ii) *CFC* is not a regular dealer in property under paragraph (a)(4)(iv) of this section and its options, forwards, and other financial instruments are not dealer property within the meaning of paragraph (a)(4)(v) of this section.

(vii) *Debt instrument.* The term *debt instrument* includes bonds, debentures, notes, certificates, accounts receivable, and other evidences of indebtedness.

(b) *Dividends, interest, rents, royalties, and annuities*—(1) *In general.* Foreign personal holding company income includes—

(i) Dividends, except certain dividends from related persons as described in paragraph (b)(4) of this section and distributions of previously taxed income under section 959(b);

(ii) Interest, except export financing interest as defined in paragraph (b)(2) of this section and certain interest received from related persons as described in paragraph (b)(4) of this section;

(iii) Rents and royalties, except certain rents and royalties received from related persons as described in paragraph (b)(5) of this section and rents and royalties derived in the active conduct of a trade or business as defined in paragraph (b)(6) of this section; and

(iv) Annuities.

(2) *Exclusion of certain export financing interest*—(i) *In general.* Foreign personal holding company income does not include interest that is export financing interest. The term *export financing interest* means interest that is derived in the conduct of a banking business and is export financing interest as defined in section 904(d)(2)(G). Solely for purposes of determining whether interest is export financing interest, property is treated as manufactured, produced, grown, or extracted in the United States if it is so treated under § 1.927(a)–1T(c).

(ii) *Exceptions.* Export financing interest does not include income from related party factoring that is treated as interest under section 864(d) (1) or (6) after the application of section 864(d)(7).

(iii) *Conduct of a banking business.* For purposes of this section, export financing interest is considered derived in the conduct of a banking business if, in connection with the financing from which the interest is derived, the corporation, through its own officers or staff of employees, engages in all the activities in which banks customarily engage in issuing and servicing a loan.

(iv) *Examples.* The following examples illustrate the application of this paragraph (b)(2).

Example 1. (i) *DS*, a domestic corporation, manufactures property in the United States. In addition to selling inventory (property described in section 1221(1)), *DS* occasionally sells depreciable equipment it manufactures for use in its trade or business, which is property described in section 1221(2). Less than 50 percent of the fair market value, determined in accordance with section 904(d)(2)(G), of each item of inventory or equipment sold by *DS* is attributable to products imported into the United States. *CFC*, a controlled foreign corporation with respect to which *DS* is a related person (within the meaning of section 954(d)(3)), provides loans described in section 864(d)(6) to unrelated persons for the purchase of property from *DS*. This property is purchased exclusively for use or consumption outside the United States and outside *CFC*'s country of incorporation.

(ii) If, in issuing and servicing loans made with respect to purchases from *DS* of depreciable equipment used in its trade or business, which is property described in section 1221(2) in the hands of *DS*, *CFC* engages in all the activities in which banks customarily engage in issuing and servicing loans, the interest accrued from these loans would be export financing interest meeting the requirements of this paragraph (b)(2) and, thus, not included in foreign personal holding company income. However, interest from the loans made with respect to purchases from *DS* of property that is inventory in the hands of *DS* cannot be export financing interest because it is treated as income from a trade or service receivable under section 864(d)(6) and the exception under section 864(d)(7) does not apply. Thus the interest from loans made with respect to this inventory is included in foreign personal holding company income under paragraph (b)(1)(ii) of this section.

Example 2. (i) *DS*, a domestic corporation manufactures property in the United States. *DS* wholly owns two controlled foreign

corporations organized in Country A, *CFC1* and *CFC2*. *CFC1* has a substantial part of its assets used in its trade or business in Country A. *CFC1* purchases the property that *DS* manufactures and sells it without further manufacture for use or consumption within Country A. This property is inventory property, as described in section 1221(1), in the hands of *CFC1*. Less than 50 percent of the fair market value, determined in accordance with section 904(d)(2)(G), of each item of inventory sold by *CFC1* is attributable to products imported into the United States. *CFC2* provides loans described in section 864(d)(6) to unrelated persons in Country A for the purchase of the property from *CFC1*.

(ii) If, in issuing and servicing loans made with respect to purchases from *CFC1* of the inventory property, *CFC2* engages in all the activities in which banks customarily engage in issuing and servicing loans, the interest accrued from these loans would be export financing interest meeting the requirements of paragraph (b)(2) of this section. It is not treated as income from a trade or service receivable under section 864(d)(6) because the exception under section 864(d)(7) applies. Thus the interest is excluded from foreign personal holding company income.

Example 3. The facts are the same as in *Example 2* except that the property sold by *CFC1* is manufactured by *CFC1* in Country A from component parts that were manufactured by *DS* in the United States. The interest accrued from the loans by *CFC2* is not export financing interest as defined in section 904(d)(2)(G) because the property is not manufactured in the United States under § 1.927(a)–1T(c). No portion of the interest is export financing interest as defined in this paragraph (b)(2). The full amount of the interest is, therefore, included in foreign personal holding company income under paragraph (b)(1)(ii) of this section.

(3) *Treatment of tax-exempt interest.* [Reserved] For guidance, see § 4.954–2(b)(6) of this chapter.

(4) *Exclusion of dividends or interest from related persons*—(i) *In general*—(A) *Corporate payor.* Foreign personal holding company income received by a controlled foreign corporation does not include dividends or interest if the payor—

(*1*) Is a corporation that is a related person with respect to the controlled foreign corporation, as defined in section 954(d)(3);

(*2*) Is created or organized under the laws of the same foreign country (the *country of incorporation*) as is the controlled foreign corporation; and

(*3*) Uses a substantial part of its assets in a trade or business in its country of incorporation, as determined under this paragraph (b)(4).

(B) *Payment by a partnership.* For purposes of this paragraph (b)(4), if a partnership with one or more corporate partners makes a payment of interest, a corporate partner will be treated as the payor of the interest—

(*1*) If the interest payment gives rise to a partnership item of deduction under the Internal Revenue Code or Income Tax Regulations, to the extent that the item of deduction is allocable to the corporate partner under section 704(b); or

(*2*) If the interest payment does not give rise to a partnership item of deduction under the Internal Revenue Code or Income Tax Regulations, to the extent that a partnership item reasonably related to the payment would be allocated to that partner under an existing allocation under the partnership agreement (made pursuant to section 704(b)).

(ii) *Exceptions*—(A) *Dividends.* Dividends are excluded from foreign personal holding company income under this paragraph (b)(4) only to the extent that they are paid out of earnings and profits that are earned or accumulated during a period in which—

(*1*) The stock on which dividends are paid with respect to which the exclusion is claimed was owned by the recipient controlled foreign corporation directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of paragraph (b)(4)(i)(A) of this section; and

(*2*) Each of the requirements of paragraph (b)(4)(i)(A) of this section is satisfied or, to the extent earned or accumulated during a taxable year of the related foreign corporation ending on or before December 31, 1962, during a period in which the payor was a related corporation as to the controlled foreign corporation and the other requirements of paragraph (b)(4)(i)(A) of this section were substantially satisfied.

(*3*) This paragraph (b)(4)(ii)(A) is illustrated by the following example:

Example. *A*, a domestic corporation, owns all of the stock of *B*, a corporation created and organized under the laws of Country Y, and *C*, a corporation created and organized under the laws of Country X. The taxable year of each of the corporations is the calendar year. In Year 1, *B* earns $100 of income from the sale of products in Country Y that it manufactured in Country Y. *C* had no earnings and profits in Year 1. On January 1 of Year 2, *A* contributes all of the stock of *B* and *C* to Newco, a Country Y corporation, in exchange for all of the stock of Newco. Neither *B* nor *C* earns any income in Year 2, but at the end of Year 2 *B* distributes the $100 accumulated earnings and profits to Newco. Newco's income from the distribution, $100, is foreign personal holding company income because the earnings and profits distributed by *B* were not earned or accumulated during a period in which the stock of *B* was owned by Newco and in which each of the requirements of paragraph (b)(4)(i)(A) of this section was satisfied.

(B) *Interest paid out of adjusted foreign base company income or insurance income*—(*1*) *In general.* Interest may not be excluded from the foreign personal holding company income of the recipient under this paragraph (b)(4) to the extent that the deduction for the interest is allocated under § 1.954–1(a)(4) and (c) to the payor's adjusted gross foreign base company income (as defined in § 1.954–1(a)(3)), adjusted gross insurance income (as defined in § 1.954–1(a)(6)), or any other category of income included in the computation of subpart F income under section 952(a).

(*2*) *Rule for corporations that are both recipients and payors of interest.* If a controlled foreign corporation is both a recipient and payor of interest, the interest that is received will be characterized before the interest that is paid. In addition, the amount of interest paid or accrued, directly or indirectly, by the controlled foreign corporation to a related person (as defined in section 954(d)(3)) shall be offset against and eliminate any interest received or accrued, directly or indirectly, by the controlled foreign corporation from that related person. In a case in which the controlled foreign corporation pays or accrues interest to a related person, as defined in section 954(d)(3), and also receives or accrues interest indirectly from the related person, the smallest interest payment is eliminated and the amounts of all other interest payments are reduced by the amount of the smallest interest payment.

(C) *Coordination with sections 864(d) and 881(c).* Income of a controlled foreign corporation that is treated as interest under section 864(d) (1) or (6), or that is portfolio interest, as defined by section 881(c), is not excluded from foreign personal holding company income under section 954(c)(3)(A)(i) and this paragraph (b)(4).

(iii) *Trade or business requirement.* Except as otherwise provided under this paragraph (b)(4), the principles of section 367(a) apply for purposes of determining whether the payor has a trade or business in its country of incorporation and whether its assets are used in that trade or business. Property purchased or produced for use in a trade or business is not considered used in a trade or business before it is placed in service or after it is retired from service as determined in accordance with the principles of sections 167 and 168.

(iv) *Substantial assets test.* A substantial part of the assets of the payor will be considered to be used in a trade or business located in the payor's country of incorporation for a taxable year only if the average value of the payor's assets for such year that are used in the trade or business and are

located in such country equals more than 50 percent of the average value of all the assets of the payor (including assets not used in a trade or business). The average value of assets for the taxable year is determined by averaging the values of assets at the close of each quarter of the taxable year. The value of assets is determined under paragraph (b)(4)(v) of this section, and the location of assets used in a trade or business of the payor is determined under paragraphs (b)(4) (vi) through (xi) of this section.

(v) *Valuation of assets.* For purposes of determining whether a substantial part of the assets of the payor are used in a trade or business in its country of incorporation, the value of assets shall be their fair market value (not reduced by liabilities), which, in the absence of affirmative evidence to the contrary, shall be deemed to be their adjusted basis.

(vi) *Location of tangible property*—(A) *In general.* Tangible property (other than inventory and similar property as defined in paragraph (a)(4)(iii) of this section, and dealer property as defined in paragraph (a)(4)(v) of this section) used in a trade or business is considered located in the country in which it is physically located.

(B) *Exception.* An item of tangible personal property that is used in the trade or business of a payor in the payor's country of incorporation is considered located within the payor's country of incorporation while it is temporarily located elsewhere for inspection or repair if the property is not placed in service in a country other than the payor's country of incorporation and is not to be so placed in service following the inspection or repair.

(vii) *Location of intangible property*—(A) *In general.* Intangible property (other than inventory and similar property as defined in paragraph (a)(4)(iii) of this section, dealer property as defined in paragraph (a)(4)(v) of this section, and debt instruments) is considered located entirely in the payor's country of incorporation for a quarter of the taxable year only if the payor conducts all of its activities in connection with the use or exploitation of the property in that country during that entire quarter. For this purpose, the country in which the activities connected to the use or exploitation of the property are conducted is the country in which the expenses associated with these activities are incurred. Expenses incurred in connection with the use or exploitation of an item of intangible property are included in the computation provided by this paragraph (b)(4) if they would be deductible under section 162 or includible in inventory costs or the cost of goods sold if the payor were a domestic corporation. If the payor conducts such activities through an agent or independent contractor, then the expenses incurred by the payor with respect to the agent or independent contractor shall be deemed to be incurred by the payor in the country in which the expenses of the agent or independent contractor were incurred by the agent or independent contractor.

(B) *Exception for property located in part in the payor's country of incorporation.* If the payor conducts its activities in connection with the use or exploitation of an item of intangible property, including goodwill (other than inventory and similar property, dealer property and debt instruments) during a quarter of the taxable year both in its country of incorporation and elsewhere, then the value of the intangible considered located in the payor's country of incorporation during that quarter is a percentage of the value of the item as of the close of the quarter. That percentage equals the ratio that the expenses incurred by the payor (described in paragraph (b)(4)(vii)(A) of this section) during the entire quarter by reason of activities that are connected with the use or exploitation of the item of intangible property and are conducted in the payor's country of incorporation bear to all expenses incurred by the payor during the entire quarter by reason of all such activities worldwide.

(viii) *Location of inventory and dealer property*—(A) *In general.* Inventory and similar property, as defined in paragraph (a)(4)(iii) of this section, and dealer property, as defined in paragraph (a)(4)(v) of this section, are considered located entirely in the payor's country of incorporation for a quarter of the taxable year only if the payor conducts all of its activities in connection with the production and sale, or purchase and resale, of such property in its country of incorporation during that entire quarter. If the payor conducts such activities through an agent or independent contractor, then the location of such activities is the place in which they are conducted by the agent or independent contractor.

(B) *Inventory and dealer property located in part in the payor's country of incorporation.* If the payor conducts its activities in connection with the production and sale, or purchase and resale, of inventory or similar property or dealer property during a quarter of the taxable year both in its country of incorporation and elsewhere, then the value of the inventory or similar property or dealer property considered located in the payor's country of incorporation during each quarter is a percentage of the value of the inventory or similar property or dealer property as of the close of the quarter. That percentage equals the ratio that the costs and expenses incurred by the payor during the entire quarter by reason of activities connected with the production and sale, or purchase and resale, of inventory or similar property or dealer property that are conducted in the payor's country of incorporation bear to all costs or expenses incurred by the payor during the entire quarter by reason of all such activities worldwide. A cost incurred in connection with the production and sale or purchase and resale of inventory or similar property or dealer property is included in this computation if it—

(*1*) Would be included in inventory costs or otherwise capitalized with respect to inventory or similar property or dealer property under section 61, 263A, 471, or 472 if the payor were a domestic corporation; or

(*2*) Would be deductible under section 162 if the payor were a domestic corporation and is definitely related to gross income derived from such property (but not to all classes of gross income derived by the payor) under the principles of § 1.861–8.

(ix) *Location of debt instruments.* For purposes of this paragraph (b)(4), debt instruments, other than debt instruments that are inventory or similar property (as defined in paragraph (a)(4)(iii) of this section) or dealer property (as defined in paragraph (a)(4)(v) of this section) are considered to be used in a trade or business only if they arise from the sale of inventory or similar property or dealer property by the payor or from the rendition of services by the payor in the ordinary course of a trade or business of the payor, and only until such time as interest is required to be charged under section 482. Debt instruments that arise from the sale of inventory or similar property or dealer property during a quarter are treated as having the same location, proportionately, as the inventory or similar property or dealer property held during that quarter. Debt instruments arising from the rendition of services in the ordinary course of a trade or business are considered located on a proportionate basis in the countries in which the services to which they relate are performed.

(x) *Treatment of certain stock interests.* Stock in a controlled foreign corporation (lower-tier corporation) that is incorporated in the same country as the payor and related to the payor

within the meaning of section 954(d)(3) shall be considered located in the payor's country of incorporation in proportion to the value of the assets of the lower-tier corporation. The location of assets used in a trade or business of the lower-tier corporation shall be determined under the rules of this paragraph (b)(4).

(xi) *Treatment of banks and insurance companies.* [Reserved]

(5) *Exclusion of rents and royalties derived from related persons*—(i) *In general*—(A) *Corporate payor.* Foreign personal holding company income received by a controlled foreign corporation does not include rents or royalties if—

(*1*) The payor is a corporation that is a related person with respect to the controlled foreign corporation, as defined in section 954(d)(3); and

(*2*) The rents or royalties are for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation receiving the payments is created or organized (the country of incorporation).

(B) *Payment by a partnership.* For purposes of this paragraph (b)(5), if a partnership with one or more corporate partners makes a payment of rents or royalties, a corporate partner will be treated as the payor of the rents or royalties—

(*1*) If the rent or royalty payment gives rise to a partnership item of deduction under the Internal Revenue Code or Income Tax Regulations, to the extent the item of deduction is allocable to the corporate partner under section 704(b); or

(*2*) If the rent or royalty payment does not give rise to a partnership item of deduction under the Internal Revenue Code or Income Tax Regulations, to the extent that a partnership item reasonably related to the payment would be allocated to that partner under an existing allocation under the partnership agreement (made pursuant to section 704(b)).

(ii) *Exceptions*—(A) *Rents or royalties paid out of adjusted foreign base company income or insurance income.* Rents or royalties may not be excluded from the foreign personal holding company income of the recipient under this paragraph (b)(5) to the extent that deductions for the payments are allocated under section 954(b)(5) and § 1.954–1(a)(4) and (c) to the payor's adjusted gross foreign base company income (as defined in § 1.954–1(a)(3)), adjusted gross insurance income (as defined in § 1.954–1(a)(6)), or any other category of income included in the computation of subpart F income under section 952(a).

(B) *Property used in part in the controlled foreign corporation's country of incorporation.* If the payor uses the property both in the controlled foreign corporation's country of incorporation and elsewhere, the part of the rent or royalty attributable (determined under the principles of section 482) to the use of, or the privilege of using, the property outside such country of incorporation is included in the computation of foreign personal holding company income under this paragraph (b).

(6) *Exclusion of rents and royalties derived in the active conduct of a trade or business.* Foreign personal holding company income shall not include rents or royalties that are derived in the active conduct of a trade or business and received from a person that is not a related person (as defined in section 954(d)(3)) with respect to the controlled foreign corporation. For purposes of this section, rents or royalties are derived in the active conduct of a trade or business only if the provisions of paragraph (c) or (d) of this section are satisfied.

(c) *Excluded rents*—(1) *Active conduct of a trade or business.* Rents will be considered for purposes of paragraph (b)(6) of this section to be derived in the active conduct of a trade or business if such rents are derived by the controlled foreign corporation (the lessor) from leasing any of the following—

(i) Property that the lessor has manufactured or produced, or has acquired and added substantial value to, but only if the lessor is regularly engaged in the manufacture or production of, or in the acquisition and addition of substantial value to, property of such kind;

(ii) Real property with respect to which the lessor, through its own officers or staff of employees, regularly performs active and substantial management and operational functions while the property is leased;

(iii) Personal property ordinarily used by the lessor in the active conduct of a trade or business, leased temporarily during a period when the property would, but for such leasing, be idle; or

(iv) Property that is leased as a result of the performance of marketing functions by such lessor if the lessor, through its own officers or staff of employees located in a foreign country, maintains and operates an organization in such country that is regularly engaged in the business of marketing, or of marketing and servicing, the leased property and that is substantial in relation to the amount of rents derived from the leasing of such property.

(2) *Special rules*—(i) *Adding substantial value.* For purposes of paragraph (c)(1)(i) of this section, the performance of marketing functions will not be considered to add substantial value to property.

(ii) *Substantiality of foreign organization.* For purposes of paragraph (c)(1)(iv) of this section, whether an organization in a foreign country is substantial in relation to the amount of rents is determined based on all of the facts and circumstances. However, such an organization will be considered substantial in relation to the amount of rents if active leasing expenses, as defined in paragraph (c)(2)(iii) of this section, equal or exceed 25 percent of the adjusted leasing profit, as defined in paragraph (c)(2)(iv) of this section.

(iii) *Active leasing expenses.* The term *active leasing expenses* means the deductions incurred by an organization of the lessor in a foreign country that are properly allocable to rental income and that would be allowable under section 162 to the lessor if it were a domestic corporation, other than—

(A) Deductions for compensation for personal services rendered by shareholders of, or related persons (as defined in section 954(d)(3)) with respect to, the lessor;

(B) Deductions for rents paid or accrued;

(C) Deductions that, although generally allowable under section 162, would be specifically allowable to the lessor (if the lessor were a domestic corporation) under any section of the Internal Revenue Code other than section 162; and

(D) Deductions for payments made to agents or independent contractors with respect to the leased property other than payments for insurance, utilities and other expenses for like services, or for capitalized repairs.

(iv) *Adjusted leasing profit.* The term *adjusted leasing profit* means the gross income of the lessor from rents, reduced by the sum of—

(A) The rents paid or incurred by the lessor with respect to such rental income;

(B) The amounts that would be allowable to such lessor (if the lessor were a domestic corporation) as deductions under sections 167 or 168 with respect to such rental income; and

(C) The amounts paid by the lessor to agents or independent contractors with respect to such rental income other than payments for insurance, utilities and other expenses for like services, or for capitalized repairs.

(3) *Examples.* The application of this paragraph (c) is illustrated by the following examples.

Example 1. Controlled foreign corporation *A* is regularly engaged in the production of office machines which it sells or leases to others and services. Under paragraph (c)(1)(i) of this section, the rental income of Corporation *A* from these leases is derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 2. Controlled foreign corporation *D* purchases motor vehicles which it leases to others. In the conduct of its short-term leasing of such vehicles in foreign country X, Corporation *D* owns a large number of motor vehicles in country X which it services and repairs, leases motor vehicles to customers on an hourly, daily, or weekly basis, maintains offices and service facilities in country X from which to lease and service such vehicles, and maintains therein a sizable staff of its own administrative, sales, and service personnel. Corporation *D* also leases in country X on a long-term basis, generally for a term of one year, motor vehicles that it owns. Under the terms of the long-term leases, Corporation *D* is required to repair and service, during the term of the lease, the leased motor vehicles without cost to the lessee. By the maintenance in country X of office, sales, and service facilities and its complete staff of administrative, sales, and service personnel, Corporation *D* maintains and operates an organization therein that is regularly engaged in the business of marketing and servicing the motor vehicles that are leased. The deductions incurred by such organization satisfy the 25-percent test of paragraph (c)(2)(ii) of this section; thus, such organization is substantial in relation to the rents Corporation *D* receives from leasing the motor vehicles. Therefore, under paragraph (c)(1)(iv) of this section, such rents are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 3. Controlled foreign corporation *E* owns a complex of apartment buildings that it has acquired by purchase. Corporation *E* engages a real estate management firm to lease the apartments, manage the buildings and pay over the net rents to Corporation *E*. The rental income of Corporation *E* from such leases is not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 4. Controlled foreign corporation *F* acquired by purchase a twenty-story office building in a foreign country, three floors of which it occupies and the rest of which it leases. Corporation *F* acts as rental agent for the leasing of offices in the building and employs a substantial staff to perform other management and maintenance functions. Under paragraph (c)(1)(ii) of this section, the rents received by Corporation *F* from such leasing operations are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 5. Controlled foreign corporation *G* owns equipment that it ordinarily uses to perform contracts in foreign countries to drill oil wells. For occasional brief and irregular periods it is unable to obtain contracts requiring immediate performance sufficient to employ all such equipment. During such a period it sometimes leases such idle equipment temporarily. After the expiration of such temporary leasing of the property, Corporation *G* continues the use of such equipment in the performance of its own drilling contracts. Under paragraph (c)(1)(iii) of this section, rents Corporation *G* receives from such leasing of idle equipment are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

(d) *Excluded royalties*—(1) *Active conduct of a trade or business.* Royalties will be considered for purposes of paragraph (b)(6) of this section to be derived in the active conduct of a trade or business if such royalties are derived by the controlled foreign corporation (the licensor) from licensing—

(i) Property that the licensor has developed, created, or produced, or has acquired and added substantial value to, but only so long as the licensor is regularly engaged in the development, creation, or production of, or in the acquisition of and addition of substantial value to, property of such kind; or

(ii) Property that is licensed as a result of the performance of marketing functions by such licensor if the licensor, through its own officers or staff of employees located in a foreign country, maintains and operates an organization in such country that is regularly engaged in the business of marketing, or of marketing and servicing, the licensed property and that is substantial in relation to the amount of royalties derived from the licensing of such property.

(2) *Special rules*—(i) *Adding substantial value.* For purposes of paragraph (d)(1)(i) of this section, the performance of marketing functions will not be considered to add substantial value to property.

(ii) *Substantiality of foreign organization.* For purposes of paragraph (d)(1)(ii) of this section, whether an organization in a foreign country is substantial in relation to the amount of royalties is determined based on all of the facts and circumstances. However, such an organization will be considered substantial in relation to the amount of royalties if active licensing expenses, as defined in paragraph (d)(2)(iii) of this section, equal or exceed 25 percent of the adjusted licensing profit, as defined in paragraph (d)(2)(iv) of this section.

(iii) *Active licensing expenses.* The term *active licensing expenses* means the deductions incurred by an organization of the licensor in a foreign country that are properly allocable to royalty income and that would be allowable under section 162 to the licensor if it were a domestic corporation, other than—

(A) Deductions for compensation for personal services rendered by shareholders of, or related persons (as defined in section 954(d)(3)) with respect to, the licensor;

(B) Deductions for royalties paid or incurred;

(C) Deductions that, although generally allowable under section 162, would be specifically allowable to the licensor (if the controlled foreign corporation were a domestic corporation) under any section of the Internal Revenue Code other than section 162; and

(D) Deductions for payments made to agents or independent contractors with respect to the licensed property.

(iv) *Adjusted licensing profit.* The term *adjusted licensing profit* means the gross income of the licensor from royalties, reduced by the sum of—

(A) The royalties paid or incurred by the licensor with respect to such royalty income;

(B) The amounts that would be allowable to such licensor as deductions under section 167 or 197 (if the licensor were a domestic corporation) with respect to such royalty income; and

(C) The amounts paid by the licensor to agents or independent contractors with respect to such royalty income.

(3) *Examples.* The application of this paragraph (d) is illustrated by the following examples.

Example 1. Controlled foreign corporation *A*, through its own staff of employees, owns and operates a research facility in foreign country X. At the research facility employees of Corporation *A* who are scientists, engineers, and technicians regularly perform experiments, tests, and other technical activities, that ultimately result in the issuance of patents that it sells or licenses. Under paragraph (d)(1)(i) of this section, royalties received by Corporation *A* for the privilege of using patented rights that it develops as a result of such research activity are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A), but only so long as the licensor is regularly engaged in the development, creation, or production of, or in the acquisition of and addition of substantial value to, property of such kind.

Example 2. Assume that Corporation *A* in *Example 1*, in addition to receiving royalties for the use of patents that it develops, receives royalties for the use of patents that it acquires by purchase and licenses to others without adding any value thereto. Corporation *A* generally consummates royalty agreements on such purchased patents as the result of inquiries received by it from prospective licensees when the fact becomes known in the business community, as a result of the filing of a patent, advertisements in trade journals, announcements, and contacts by employees of Corporation *A*, that Corporation *A* has acquired rights under a patent and is interested in licensing its rights. Corporation *A* does not, however, maintain and operate

an organization in a foreign country that is regularly engaged in the business of marketing the purchased patents. The royalties received by Corporation *A* for the use of the purchased patents are not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 3. Controlled foreign corporation *B* receives royalties for the use of patents that it acquires by purchase. The primary business of Corporation *B*, operated on a regular basis, consists of licensing patents that it has purchased raw from inventors and, through the efforts of a substantial staff of employees consisting of scientists, engineers, and technicians, made susceptible to commercial application. For example, Corporation *B*, after purchasing patent rights covering a chemical process, designs specialized production equipment required for the commercial adaptation of the process and, by so doing, substantially increases the value of the patent. Under paragraph (d)(1)(i) of this section, royalties received by Corporation *B* from the use of such patent are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 4. Controlled foreign corporation *C* receives royalties for the use of a patent that it developed through its own staff of employees at its facility in country X. Corporation *C* has developed no other patents. It does not regularly employ a staff of scientists, engineers or technicians to create new products to be patented. Further, it does not purchase and license patents developed by others to which it has added substantial value. The royalties received by Corporation *C* are not derived from the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 5. Controlled foreign corporation *D* finances independent persons in the development of patented items in return for an ownership interest in such items from which it derives a percentage of royalty income, if any, subsequently derived from the use by others of the protected right. Corporation *D* also attempts to increase its royalty income from such patents by contacting prospective licensees and rendering to licensees advice that is intended to promote the use of the patented property. Corporation *D* does not, however, maintain and operate an organization in a foreign country that is regularly engaged in the business of marketing the patents. Royalties received by Corporation *D* for the use of such patents are not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

(e) *Certain property transactions*—(1) *In general*—(i) *Inclusions.* Gain from certain property transactions described in section 954(c)(1)(B) includes the excess of gains over losses from the sale or exchange of—

(A) Property that gives rise to dividends, interest, rents, royalties or annuities, as described in paragraph (e)(2) of this section;

(B) Property that is an interest in a partnership, trust or REMIC; and

(C) Property that does not give rise to income, as described in paragraph (e)(3) of this section.

(ii) *Exceptions.* Gain or loss from certain property transactions described in section 954(c)(1)(B) and paragraph (e)(1)(i) of this section does not include gain or loss from the sale or exchange of—

(A) Inventory or similar property, as defined in paragraph (a)(4)(iii) of this section;

(B) Dealer property, as defined in paragraph (a)(4)(v) of this section; or

(C) Property that gives rise to rents or royalties described in paragraph (b)(6) of this section that are derived in the active conduct of a trade or business from persons that are not related persons (as defined in section 954(d)(3)) with respect to the controlled foreign corporation.

(iii) *Treatment of losses.* Section 1.954–1(c)(1)(ii) provides for the treatment of losses in excess of gains from the sale or exchange of property described in paragraph (e)(1)(i) of this section.

(iv) *Dual character property.* Property may, in part, constitute property that gives rise to certain income as described in paragraph (e)(2) of this section or, in part, constitute property that does not give rise to any income as described in paragraph (e)(3) of this section. However, property that is described in paragraph (e)(1)(i)(B) of this section cannot be dual character property. Dual character property must be treated as two separate properties for purposes of paragraph (e)(2) or (3) of this section. Accordingly, the sale or exchange of such dual character property will give rise to gain or loss that in part must be included in the computation of foreign personal holding company income under paragraph (e)(2) or (3) of this section, and in part is excluded from such computation. Gain or loss from the disposition of dual character property must be bifurcated under this paragraph (e)(1)(iv) pursuant to the method that most reasonably reflects the relative uses of the property. Reasonable methods may include comparisons in terms of gross income generated or the physical division of the property. In the case of real property, the physical division of the property will in most cases be the most reasonable method available. For example, if a controlled foreign corporation owns an office building, uses 60 percent of the building in its trade or business, and rents out the other 40 percent, then 40 percent of the gain recognized on the disposition of the property would reasonably be treated as gain that is included in the computation of foreign personal holding company income under this paragraph (e)(1). This paragraph (e)(1)(iv) addresses the contemporaneous use of property for dual purposes. For rules concerning changes in the use of property affecting its classification for purposes of this paragraph (e), see paragraph (a)(3) of this section.

(2) *Property that gives rise to certain income*—(i) *In general.* Property the sale or exchange of which gives rise to foreign personal holding company income under this paragraph (e)(2) includes property that gives rise to dividends, interest, rents, royalties or annuities described in paragraph (b) of this section, including—

(A) Property that gives rise to export financing interest described in paragraph (b)(2) of this section; and

(B) Property that gives rise to income from related persons described in paragraph (b) (4) or (5) of this section.

(ii) *Gain or loss from the disposition of a debt instrument.* Gain or loss from the sale, exchange, or retirement of a debt instrument is included in the computation of foreign personal holding company income under this paragraph (e) unless—

(A) In the case of gain—

(*1*) It is interest (as defined in paragraph (a)(4)(i) of this section); or

(*2*) It is income equivalent to interest (as described in paragraph (h) of this section); and

(B) In the case of loss—

(*1*) It is directly allocated to, or treated as an adjustment to, interest income (as described in paragraph (a)(4)(i) of this section) or income equivalent to interest (as defined in paragraph (h) of this section) under any provision of the Internal Revenue Code or Income Tax Regulations; or

(*2*) It is required to be apportioned in the same manner as interest expense under section 864(e) or any other provision of the Internal Revenue Code or Income Tax Regulations.

(3) *Property that does not give rise to income.* Except as otherwise provided in this paragraph (e)(3), for purposes of this section, the term *property that does not give rise to income* includes all rights and interests in property (whether or not a capital asset) including, for example, forwards, futures and options. Property that does not give rise to income shall not include—

(i) Property that gives rise to dividends, interest, rents, royalties or annuities described in paragraph (e)(2) of this section;

(ii) Tangible property (other than real property) used or held for use in the controlled foreign corporation's trade or business that is of a character that would be subject to the allowance for

depreciation under section 167 or 168 and the regulations under those sections (including tangible property described in § 1.167(a)–2);

(iii) Real property that does not give rise to rental or similar income, to the extent used or held for use in the controlled foreign corporation's trade or business;

(iv) Intangible property (as defined in section 936(h)(3)(B)), goodwill or going concern value, to the extent used or held for use in the controlled foreign corporation's trade or business;

(v) Notional principal contracts (but see paragraphs (f)(2), (g)(2) and (h)(3) of this section for rules that include income from certain notional principal contracts in gains from commodities transactions, foreign currency gains and income equivalent to interest, respectively); or

(vi) Other property that is excepted from the general rule of this paragraph (e)(3) by the Commissioner in published guidance. See § 601.601(d)(2) of this chapter.

(f) *Commodities transactions*—(1) *In general*—(i) *Inclusion in foreign personal holding company income.* Foreign personal holding company income includes the excess of gains over losses from commodities transactions.

(ii) *Exception.* Gains and losses from qualified active sales and qualified hedging transactions are excluded from the computation of foreign personal holding company income under this paragraph (f).

(iii) *Treatment of losses.* Section 1.954–1(c)(1)(ii) provides for the treatment of losses in excess of gains from commodities transactions.

(2) *Definitions*—(i) *Commodity.* For purposes of this section, the term *commodity* includes tangible personal property of a kind that is actively traded or with respect to which contractual interests are actively traded.

(ii) *Commodities transaction.* The term *commodities transaction* means the purchase or sale of a commodity for immediate (spot) delivery or deferred (forward) delivery, or the right to purchase, sell, receive, or transfer a commodity, or any other right or obligation with respect to a commodity accomplished through a cash or off-exchange market, an interbank market, an organized exchange or board of trade, or an over-the-counter market, or in a transaction effected between private parties outside of any market. Commodities transactions include, but are not limited to—

(A) A futures or forward contract in a commodity;

(B) A leverage contract in a commodity purchased from a leverage transaction merchant;

(C) An exchange of futures for physical transaction;

(D) A transaction, including a notional principal contract, in which the income or loss to the parties is measured by reference to the price of a commodity, a pool of commodities, or an index of commodities;

(E) The purchase or sale of an option or other right to acquire or transfer a commodity, a futures contract in a commodity, or an index of commodities; and

(F) The delivery of one commodity in exchange for the delivery of another commodity, the same commodity at another time, cash, or nonfunctional currency.

(iii) *Qualified active sale*—(A) *In general.* The term *qualified active sale* means the sale of commodities in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities if substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant or handler of commodities. The sale of commodities held by a controlled foreign corporation other than in its capacity as an active producer, processor, merchant or handler of commodities is not a qualified active sale. For example, the sale by a controlled foreign corporation of commodities that were held for investment or speculation would not be a qualified active sale.

(B) *Active conduct of a commodities business.* For purposes of this paragraph, a controlled foreign corporation is engaged in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities only with respect to commodities for which each of the following conditions is satisfied—

(*1*) It holds the commodities directly, and not through an agent or independent contractor, as inventory or similar property (as defined in paragraph (a)(4)(iii) of this section) or as dealer property (as defined in paragraph (a)(4)(v) of this section); and

(*2*) With respect to such commodities, it incurs substantial expenses in the ordinary course of a commodities business from engaging in one or more of the following activities directly, and not through an independent contractor—

(*i*) Substantial activities in the production of the commodities, including planting, tending or harvesting crops, raising or slaughtering livestock, or extracting minerals;

(*ii*) Substantial processing activities prior to the sale of the commodities, including the blending and drying of agricultural commodities, or the concentrating, refining, mixing, crushing, aerating or milling of commodities; or

(*iii*) Significant activities as described in paragraph (f)(2)(iii)(B)(*3*) of this section.

(*3*) For purposes of paragraph (f)(2)(iii)(B)(*2*)(*iii*) of this section, the significant activities must relate to—

(*i*) The physical movement, handling and storage of the commodities, including preparation of contracts and invoices, arranging freight, insurance and credit, arranging for receipt, transfer or negotiation of shipping documents, arranging storage or warehousing, and dealing with quality claims;

(*ii*) Owning and operating facilities for storage or warehousing; or

(*iii*) Owning or chartering vessels or vehicles for the transportation of the commodities.

(C) *Substantially all.* Substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities if the sum of its gross receipts from all of its qualified active sales (as defined in this paragraph (f)(2)(iii) without regard to the substantially all requirement) of commodities and its gross receipts from all of its qualified hedging transactions (as defined in paragraph (f)(2)(iv) of this section, applied without regard to the substantially all requirement of this paragraph (f)(2)(iii)(C)) equals or exceeds 85 percent of its total gross receipts for the taxable year (computed as though the corporation were a domestic corporation). In computing gross receipts, the District Director may disregard any sale or hedging transaction that has as a principal purpose manipulation of the 85 percent gross receipts test. A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately).

(D) *Activities of employees of a related entity.* For purposes of this paragraph (f), activities of employees of an entity related to the controlled foreign corporation, who are made available to and supervised on a day-to-day basis by, and whose salaries are paid by (or reimbursed to the related entity by), the controlled foreign corporation, are treated as activities engaged in directly by the controlled foreign corporation.

(E) *Financial activities.* For purposes of this paragraph (f), a corporation is not engaged in a commodities business as a producer, processor, merchant, or

handler of commodities if its business is primarily financial. For example, the business of a controlled foreign corporation is primarily financial if its principal business is making a market in notional principal contracts based on a commodities index.

(iv) *Qualified hedging transaction*—(A) *In general.* The term *qualified hedging transaction* means a bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section, with respect to qualified active sales (other than transactions described in section 988(c)(1) without regard to section 988(c)(1)(D)(i)).

(B) *Exception.* The term *qualified hedging transaction* does not include transactions that are not reasonably necessary to the conduct of business of the controlled foreign corporation as a producer, processor, merchant or handler of a commodity in the manner in which such business is customarily and usually conducted by others.

(g) *Foreign currency gain or loss*—(1) *Scope and purpose.* This paragraph (g) provides rules for the treatment of foreign currency gains and losses. Paragraph (g)(2) of this section provides the general rule. Paragraph (g)(3) of this section provides an election to include foreign currency gains or losses that would otherwise be treated as foreign personal holding company income under this paragraph (g) in the computation of another category of subpart F income. Paragraph (g)(4) of this section provides an alternative election to treat any net foreign currency gain or loss as foreign personal holding company income. Paragraph (g)(5) of this section provides rules for certain gains and losses not subject to this paragraph (g).

(2) *In general*—(i) *Inclusion.* Except as otherwise provided in this paragraph (g), foreign personal holding company income includes the excess of foreign currency gains over foreign currency losses attributable to any section 988 transactions (foreign currency gain or loss). Section 1.954–1(c)(1)(ii) provides rules for the treatment of foreign currency losses in excess of foreign currency gains. However, if an election is made under paragraph (g)(4) of this section, the excess of foreign currency losses over foreign currency gains to which the election would apply may be apportioned to, and offset, other categories of foreign personal holding company income.

(ii) *Exclusion for business needs*—(A) *General Rule.* Foreign currency gain or loss directly related to the business needs of the controlled foreign corporation is excluded from foreign personal holding company income.

(B) *Business needs.* Foreign currency gain or loss is directly related to the business needs of a controlled foreign corporation if—

(*1*) The foreign currency gain or loss—

(*i*) Arises from a transaction (other than a hedging transaction) entered into, or property used or held for use, in the normal course of the controlled foreign corporation's trade or business;

(*ii*) Arises from a transaction or property that does not itself (and could not reasonably be expected to) give rise to subpart F income other than foreign currency gain or loss;

(*iii*) Does not arise from a transaction described in section 988(c)(1)(B)(iii); and

(*iv*) Is clearly determinable from the records of the controlled foreign corporation as being derived from such transaction or property; or

(*2*) The foreign currency gain or loss arises from a bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section, with respect to a transaction or property that satisfies the requirements of paragraph (g)(2)(ii)(B)(*1*)of this section. For purposes of this paragraph (g)(2)(ii)(B)(*2*), a hedging transaction will satisfy the aggregate hedging rules of § 1.1221–2(c)(7) only if all (or all but a de minimis amount) of the aggregate risk being hedged arises in connection with transactions that satisfy the requirements of paragraph (g)(2)(ii)(B)(*1*) of this section.

(C) *Regular dealers.* Transactions in dealer property (as defined in paragraph (a)(4)(v) of this section) described in section 988(c)(1) (B) or (C) that are entered into by a controlled foreign corporation that is a regular dealer (as defined in paragraph (a)(4)(iv) of this section) in such property in its capacity as a dealer will be treated as directly related to the business needs of the controlled foreign corporation under paragraph (g)(2)(ii)(A) of this section.

(D) *Example.* The following example illustrates the provisions of this paragraph (g)(2).

Example. (i) *CFC1* and *CFC2* are controlled foreign corporations located in Country B, and are members of the same controlled group. *CFC1* is engaged in the active conduct of a trade or business that does not produce any subpart F income. *CFC2* serves as the currency coordination center for the controlled group, aggregating currency risks incurred by the group and entering into hedging transactions that transfer those risks outside of the group. Pursuant to this arrangement, and to hedge the currency risk on a non-interest bearing receivable incurred by *CFC1* in the normal course of its business, on Day 1 *CFC1* enters into a forward contract to sell Japanese Yen to CFC2 in 30 days. Also on Day 1, *CFC2* enters into a forward contract to sell Yen to unrelated Bank X on Day 30. *CFC2* is not a regular dealer in Yen spot and forward contracts, and the Yen is not the functional currency for either *CFC1* or *CFC2*.

(ii) Because the forward contract entered into by *CFC1* to sell Yen hedges a transaction entered into in the normal course of *CFC1*'s business that does not give rise to subpart F income, it qualifies as a bona fide hedging transaction as defined in paragraph (a)(4)(ii) of this section. Therefore, *CFC1*'s foreign exchange gain or loss from that forward contract will not be treated as foreign personal holding company income or loss under this paragraph (g).

(iii) Because the forward contract to purchase Yen was entered into by *CFC2* in order to assume currency risks incurred by *CFC1* it does not qualify as a bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section. Thus, foreign exchange gain or loss recognized by *CFC2* from that forward contract will be foreign personal holding company income. Because *CFC2* entered into the forward contract to sell Yen in order to hedge currency risks of *CFC1*, that forward contract also does not qualify as a bona fide hedging transaction. Thus, *CFC2*'s foreign currency gain or loss arising from that forward contract will be foreign personal holding company income.

(iii) *Special rule for foreign currency gain or loss from an interest-bearing liability.* Except as provided in paragraph (g)(5)(iv) of this section, foreign currency gain or loss arising from an interest-bearing liability is characterized as subpart F income and non-subpart F income in the same manner that interest expense associated with the liability would be allocated and apportioned between subpart F income and non-subpart F income under §§ 1.861–9T and 1.861–12T.

(3) *Election to characterize foreign currency gain or loss that arises from a specific category of subpart F income as gain or loss in that category*—(i) *In general.* For taxable years of a controlled foreign corporation beginning on or after November 6, 1995, the controlling United States shareholders of the controlled foreign corporation may elect, under this paragraph (g)(3), to exclude foreign currency gain or loss otherwise includible in the computation of foreign personal holding company income under this paragraph (g) from the computation of foreign personal holding company income under this paragraph (g) and include such foreign currency gain or loss in the category (or categories) of subpart F income (described in section 952(a), or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*)) to which such gain or loss relates. If an election is made under this paragraph (g)(3) with respect to a category (or categories) of subpart F income described in section 952(a), or,

in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*), the election shall apply to all foreign currency gain or loss that arises from—

(A) A transaction (other than a hedging transaction) entered into, or property used or held for use, in the normal course of the controlled foreign corporation's trade or business that gives rise to income in that category (or categories) and that is clearly determinable from the records of the controlled foreign corporation as being derived from such transaction or property; and

(B) A bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section, with respect to a transaction or property described in paragraph (g)(3)(i)(A) of this section. For purposes of this paragraph (g)(3)(i)(B), a hedging transaction will satisfy the aggregate hedging rules of § 1.1221–2(c)(7) only if all (or all but a de minimus amount) of the aggregate risk being hedged arises in connection with transactions or property that generate the same category of subpart F income described in section 952(a), or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*).

(ii) *Time and manner of election.* The controlling United States shareholders, as defined in § 1.954–1(c)(5), make the election on behalf of the controlled foreign corporation by filing a statement with their original income tax returns for the taxable year of such United States shareholders ending with or within the taxable year of the controlled foreign corporation for which the election is made, clearly indicating that such election has been made. If the controlling United States shareholders elect to apply these regulations retroactively, under § 1.954–0(a)(1)(ii), the election under this paragraph (g)(3) may be made by the amended return filed pursuant to the election under § 1.954–0(a)(1)(ii). The controlling United States shareholders filing the election statement described in this paragraph (g)(3)(ii) must provide copies of the election statement to all other United States shareholders of the electing controlled foreign corporation. Failure to provide copies of such statement will not cause an election under this paragraph (g)(3) to be voidable by the controlled foreign corporation or the controlling United States shareholders. However, the District Director has discretion to void the election if it is determined that three was no reasonable cause for the failure to provide copies of such statement. The statement shall include the following information—

(A) The name, address, taxpayer identification number, and taxable year of such United States shareholder;

(B) The name, address, and taxable year of the controlled foreign corporation for which the election is effective; and

(C) Any additional information required by the Commission by administrative pronouncement.

(iii) *Revocation of election.* This election is effective for the taxable year of the controlled foreign corporation for which it is made and all subsequent taxable years of such corporation unless revoked by or with the consent of the Commissioner.

(iv) *Example.* The following example illustrates the provisions of this paragraph (g)(3).

Example. (i) *CFC,* a controlled foreign corporation, is a sales company that earns foreign base company sales income under section 954(d). *CFC* makes an election under this paragraph (g)(3) to treat foreign currency gains or losses that arise from a specific category (or categories) of subpart F income (as described in section 952(a), or, in the case of foreign base company income, as described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*)) as that type of income. *CFC* aggregates the currency risk on all of its transactions that generate foreign base company sales income and hedges this net currency exposure.

(ii) Assuming no more than a de minimus amount of risk in the pool of risks being hedged arises from transactions or property that generate income other than foreign base company sales income, pursuant to its election under (g)(3), *CFC*'s net foreign currency gain from the pool and the hedging transactions will be treated as foreign base company sales income under section 954(d), rather than as foreign personal holding company income under section 954(c)(1)(D). If the pool of risks and the hedging transactions generate a net foreign currency loss, however, *CFC* must apply the rules of § 1.954–1(c)(1)(ii).

(4) *Election to treat all foreign currency gains or losses as foreign personal holding company income*—(i) *In general.* If the controlling United States shareholders make an election under this paragraph (g)(4), the controlled foreign corporation shall include in its computation of foreign personal holding company income the excess of foreign currency gains over losses or the excess of foreign currency losses over gains attributable to any section 988 transaction (except those described in paragraph (g)(5) of this section) and any section 1256 contract that would be a section 988 transaction but for section 988(c)(1)(D). Separate elections for section 1256 contracts and section 988 transactions are not permitted. An election under this paragraph (g)(4) supersedes an election under paragraph (g)(3) of this section.

(ii) *Time and manner of election.* The controlling United States shareholders, as defined in § 1.964–1(c)(5), make the election on behalf of the controlled foreign corporation in the same time and manner as provided in paragraph (g)(3)(ii) of this section.

(iii) *Revocation of election.* This election is effective for the taxable year of the controlled foreign corporation for which it is made and all subsequent taxable years of such corporation unless revoked by or with the consent of the Commissioner.

(5) *Gains and losses not subject to this paragraph*—(i) *Capital gains and losses.* Gain or loss that is treated as capital gain or loss under section 988(a)(1)(B) is not foreign currency gain or loss for purposes of this paragraph (g). Such gain or loss is treated as gain or loss from the sale or exchange of property that is included in the computation of foreign personal holding company income under paragraph (e)(1) of this section. Paragraph (a)(2) of this section provides other rules concerning income described in more than one category of foreign personal holding company income.

(ii) *Income not subject to section 988.* Gain or loss that is not treated as foreign currency gain or loss by reason of section 988 (a)(2) or (d) is not foreign currency gain or loss for purposes of this paragraph (g). However, such gain or loss may be included in the computation of other categories of foreign personal holding company income in accordance with its characterization under section 988 (a)(2) or (d) (for example, foreign currency gain that is treated as interest income under section 988(a)(2) will be included in the computation of foreign personal holding company income under paragraph (b)(ii) of this section).

(iii) *Qualified business units using the dollar approximate separate transactions method.* This paragraph (g) does not apply to any DASTM gain or loss computed under § 1.985–3(d). Such gain or loss is allocated under the rules of § 1.985–3 (e)(2)(iv) or (e)(3). However, the provisions of this paragraph (g) do apply to section 988 transactions denominated in a currency other than the United States dollar or the currency that would be the qualified business unit's functional currency were it not hyperinflationary.

(iv) *Gain or loss allocated under § 1.861–9.* [Reserved]

(h) *Income equivalent to interest*—(1) *In general*—(i) *Inclusion in foreign personal holding company income.* Except as provided in this paragraph (h), foreign personal holding company income includes income equivalent to

interest as defined in paragraph (h)(2) of this section.

(ii) *Exceptions*—(A) *Liability hedging transactions.* Income, gain, deduction or loss that is allocated and apportioned in the same manner as interest expense under the provisions of § 1.861–9T is not income equivalent to interest for purposes of this paragraph (h).

(B) *Interest.* Amounts treated as interest under section 954(c)(1)(A) and paragraph (b) of this section are not income equivalent to interest for purposes of this paragraph (h).

(2) *Definition of income equivalent to interest*—(i) *In general.* The term *income equivalent to interest* includes income that is derived from—

(A) A transaction or series of related transactions in which the payments, net payments, cash flows, or return predominantly reflect the time value of money;

(B) Transactions in which the payments (or a predominant portion thereof) are, in substance, for the use or forbearance of money;

(C) Notional principal contracts, to the extent provided in paragraph (h)(3) of this section;

(D) Factoring, to the extent provided in paragraph (h)(4) of this section;

(E) Conversion transactions, but only to the extent that gain realized with respect to such a transaction is treated as ordinary income under section 1258;

(F) The performance of services, to the extent provided in paragraph (h)(5) of this section;

(G) The commitment by a lender to provide financing, whether or not such financing actually is provided;

(H) Transfers of debt securities subject to section 1058; and

(I) Other transactions, as provided by the Commissioner in published guidance. See § 601.601(d)(2) of this chapter.

(ii) *Income from the sale of property.* Income from the sale of property will not be treated as income equivalent to interest by reason of paragraph (h)(2)(i)(A) or (B) of this section. Income derived by a controlled foreign corporation will be treated as arising from the sale of property only if the corporation in substance carries out sales activities. Accordingly, an arrangement that is designed to lend the form of a sales transaction to a transaction that in substance constitutes an advance of funds will be disregarded. For example, if a controlled foreign corporation acquires property on 30-day payment terms from one person and sells that property to another person on 90-day payment terms and at prearranged prices and terms such that the foreign corporation bears no substantial economic risk with respect to the purchase and sale other than the risk of non-payment, the foreign corporation has not in substance derived income from the sale of property.

(3) *Notional principal contracts*—(i) *In general.* Income equivalent to interest includes income from notional principal contracts denominated in the functional currency of the taxpayer (or a qualified business unit of the taxpayer, as defined in section 989(a)), the value of which is determined solely by reference to interest rates or interest rate indices, to the extent that the income from such transactions accrues on or after August 14, 1989.

(ii) *Regular dealers.* Income equivalent to interest does not include income earned by a regular dealer (as defined in paragraph (a)(4)(iv) of this section) from notional principal contracts that are dealer property (as defined in paragraph (a)(4)(v) of this section).

(4) *Income equivalent to interest from factoring*—(i) *General rule.* Income equivalent to interest includes factoring income. Except as provided in paragraph (h)(4)(ii) of this section, the term *factoring income* includes any income (including any discount income or service fee, but excluding any stated interest) derived from the acquisition and collection or disposition of a factored receivable. The amount of income equivalent to interest realized with respect to a factored receivable is the difference (if a positive number) between the amount paid for the receivable by the foreign corporation and the amount that it collects on the receivable (or realizes upon its sale of the receivable). The rules of this paragraph (h)(4) apply only with respect to the tax treatment of factoring income derived from the acquisition and collection or disposition of a factored receivable and shall not affect the characterization of an expense or loss of either the person whose goods or services gave rise to a factored receivable or the obligor under a receivable.

(ii) *Exceptions.* Factoring income shall not include—

(A) Income treated as interest under section 864(d) (1) or (6) (relating to income derived from trade or service receivables of related persons), even if such income is treated as not described in section 864(d)(1) by reason of the same-country exception of section 864(d)(7);

(B) Income derived from a factored receivable if payment for the acquisition of the receivable is made on or after the date on which stated interest begins to accrue, but only if the rate of stated interest equals or exceeds 120 percent of the Federal short-term rate (as defined under section 1274) (or the analogous rate for a currency other than the dollar) as of the date on which the receivable is acquired by the foreign corporation; or

(C) Income derived from a factored receivable if payment for the acquisition of the receivable by the foreign corporation is made only on or after the anticipated date of payment of all principal by the obligor (or the anticipated weighted average date of payment of a pool of purchased receivables).

(iii) *Factored receivable.* For purposes of this paragraph (h)(4), the term *factored receivable* includes any account receivable or other evidence of indebtedness, whether or not issued at a discount and whether or not bearing stated interest, arising out of the disposition of property or the performance of services by any person, if such account receivable or evidence of indebtedness is acquired by a person other than the person who disposed of the property or provided the services that gave rise to the account receivable or evidence of indebtedness. For purposes of this paragraph (h)(4), it is immaterial whether the person providing the property or services agrees to transfer the receivable at the time of sale (as by accepting a third-party charge or credit card) or at a later time.

(iv) *Examples.* The following examples illustrate the application of this paragraph (h)(4).

Example 1. *DP*, a domestic corporation, owns all of the outstanding stock of *FS*, a controlled foreign corporation. *FS* acquires accounts receivable arising from the sale of property by unrelated corporation *X*. The receivables have a face amount of $100, and after 30 days bear stated interest equal to at least 120 percent of the applicable Federal short-term rate (determined as of the date the receivable is acquired by *FS*). *FS* purchases the receivables from *X* for $95 on Day 1 and collects $100 plus stated interest from the obligor under the receivable on Day 40. Income (other than stated interest) derived by *FS* from the factored receivables is factoring income within the meaning of paragraph (h)(4)(i) of this section and, therefore, is income equivalent to interest.

Example 2. The facts are the same as in *Example 1*, except that, rather than collecting $100 plus stated interest from the obligor under the factored receivable on Day 40, *FS* sells the receivable to controlled foreign corporation *Y* on Day 15 for $97. Both the income derived by *FS* on the factored receivable and the income derived by *Y* (other than stated interest) on the receivable are factoring income within the meaning of paragraph (h)(4)(i) of this section, and

therefore, constitute income equivalent to interest.

Example 3. The facts are the same as in *Example 1*, except that *FS* purchases the receivables from *X* for $98 on Day 30. Income derived by *FS* from the factored receivables is excluded from factoring income under paragraph (h)(4)(ii)(B) of this section and, therefore, does not give rise to income equivalent to interest.

Example 4. The facts are the same as in *Example 3*, except that it is anticipated that all principal will be paid by the obligor of the receivables by Day 30. Income derived by *FS* from this maturity factoring of the receivables is excluded from factoring income under paragraph (h)(4)(ii)(C) of this section and, therefore, does not give rise to income equivalent to interest.

Example 5. The facts are the same as in *Example 4*, except that *FS* sells the factored receivable to *Y* for $99 on day 45, at which time stated interest is accruing on the unpaid balance of $100. Because interest was accruing at the time *Y* acquired the receivable at a rate equal to at least 120 percent of the applicable Federal short-term rate, income derived by *Y* from the factored receivable is excluded from factoring income under paragraph (h)(4)(ii)(B) of this section and, therefore, does not give rise to income equivalent to interest.

Example 6. *DP*, a domestic corporation engaged in an integrated credit card business, owns all of the outstanding stock of *FS*, a controlled foreign corporation. On Day 1 individual *A* uses a credit card issued by *DP* to purchase shoes priced at $100 from *X*, a foreign corporation unrelated to *DP*, *FS*, or *A*. On Day 7, *X* transfers the receivable (which does not bear stated interest) arising from *A*'s purchase to *FS* in exchange for $95. *FS* collects $100 from *A* on Day 45. Income derived by *FS* on the factored receivable is factoring income within the meaning of paragraph (h)(4)(i) of this section and, therefore, is income equivalent to interest.

(5) *Receivables arising from performance of services.* If payment for services performed by a controlled foreign corporation is not made until more than 120 days after the date on which such services are performed, then the income derived by the controlled foreign corporation constitutes income equivalent to interest to the extent that interest income would be imputed under the principles of section 483 or the original issue discount provisions (sections 1271 through 1275), if—

(i) Such provisions applied to contracts for the performance of services;

(ii) The time period referred to in sections 483(c)(1) and 1274(c)(1)(B) were 120 days rather than six months; and

(iii) The time period referred to in section 483(c)(1)(A) were 120 days rather than one year.

(6) *Examples.* The following examples illustrate the application of this paragraph (h).

Example 1. *CFC*, a controlled foreign corporation, promises that Corporation *A* may borrow up to $500 in principal for one year beginning at any time during the next three months at an interest rate of 10 percent. In exchange, Corporation *A* pays *CFC* a commitment fee of $2. The entire $2 fee is included in the computation of *CFC*'s foreign personal holding company income under paragraph (h)(2)(i)(G) of this section, regardless of whether Corporation *A* actually borrows from *CFC*.

Example 2. (i) At the beginning of its current taxable year, *CFC*, a controlled foreign corporation, purchases at face value a one-year debt instrument issued by Corporation *A* having a $100 principal amount and bearing a floating rate of interest set at the London Interbank Offered Rate (LIBOR) plus one percentage point. Contemporaneously, *CFC* borrows $100 from Corporation *B* for one year at a fixed interest rate of 10 percent, using the debt instrument as security.

(ii) During its current taxable year, *CFC* accrues $11 of interest from Corporation *A* on the bond. Because interest is excluded from the definition of income equivalent to interest under paragraph (h)(1)(ii)(B) of this section, the $11 is not income equivalent to interest.

(iii) During its current taxable year, *CFC* incurs $10 of interest expense with respect to the borrowing from Corporation *B*. That expense is allocated and apportioned to, and reduces, subpart F income to the extent provided in section 954(b)(5) and §§ 1.861–9T through 1.861–12T and 1.954–1(c).

Example 3. (i) On January 1, 1994, *CFC*, a controlled foreign corporation with the United States dollar as its functional currency, purchases at face value a 10-year debt instrument issued by Corporation *A* having a $100 principal amount and bearing a floating rate of interest set at the London Interbank Offered Rate (LIBOR) plus one percentage point payable on December 31st of each year. *CFC* subsequently determines that it would prefer receiving a fixed rate of return. Accordingly, on January 1, 1995, *CFC* enters into a 9-year interest rate swap agreement with Corporation *B* whereby Corporation *B* promises to pay *CFC* on December 31st of each year an amount equal to 10 percent on a notional principal amount of $100. In exchange, *CFC* promises to pay Corporation *B* an amount equal to LIBOR plus one percentage point on the notional principal amount.

(ii) On December 31, 1995, *CFC* receives $9 of interest income from Corporation *A* with respect to the debt instrument. On the same day, *CFC* receives a total of $10 from Corporation *B* and pays $9 to Corporation *B* with respect to the interest rate swap.

(iii) The $9 of interest income is foreign personal holding income under section 954(c)(1). Pursuant to § 1.446–3(d), *CFC* recognizes $1 of swap income for its 1995 taxable year that is also foreign personal holding company income because it is income equivalent to interest under paragraph (h)(2)(i)(C) of this section.

Example 4. (i) *CFC*, a controlled foreign corporation, purchases commodity X on the spot market for $100 and, contemporaneously, enters into a 3 month forward contract to sell commodity X for $104, a price set by the forward market.

(ii) Assuming that substantially all of *CFC*'s expected return is attributable to the time value of the net investment, as described in section 1258(c)(1), the transaction is a conversion transaction under section 1258(c). Accordingly, any gain treated as ordinary income under section 1258(a) will be foreign personal holding company income because it is income equivalent to interest under paragraph (h)(2)(i)(E) of this section.

Par. 4. Section 1.957–1 is amended by adding paragraphs (a), (c) *Examples 8* through *10*, and (d) to read as follows:

§ 1.957–1 Definition of controlled foreign corporation.

(a) *In general.* The term *controlled foreign corporation* means any foreign corporation of which more than 50 percent (or such lesser amount as is provided in section 957(b) or section 953(c)) of either—

(1) The total combined voting power of all classes of stock of the corporation entitled to vote; or

(2) The total value of the stock of the corporation, is owned within the meaning of section 958(a), or (except for purposes of section 953(c)) is considered as owned by applying the rules of section 958(b) and § 1.958–2, by United States shareholders on any day during the taxable year of such foreign corporation. For the definition of the term *United States shareholder*, see sections 951(b) and 953(c)(1)(A). For the definition of the term *foreign corporation*, see § 301.7701–5 of this chapter (Procedure and Administration Regulations). For the treatment of associations as corporations, see section 7701(a)(3) and §§ 301.7701–1 and 301.7701–2 of this chapter. For the definition of the term *stock*, see sections 958(a)(3) and 7701(a)(7). For the classification of a member in an association, joint stock company, or insurance company as a shareholder, see section 7701(a)(8).

* * * * *

(c) * * *

Example 8. For its prior taxable year, *JV*, a foreign corporation, had outstanding 1000 shares of class A stock, which is voting common, and 1000 shares of class B stock, which is nonvoting preferred. *DP*, a domestic corporation, and *FP*, a foreign corporation, each owned precisely 500 shares of both class A and class B stock, and each elected 5 of the 10 members of *JV*'s board of directors. The other facts and circumstances were such that *JV* was not a controlled foreign corporation on any day of the prior taxable year. On the first day of the current taxable year, *DP* purchased one share of class B stock from *FP*. *JV* was a controlled foreign corporation on that day because over 50 percent of the total value in the corporation

was held by a person that was a United States shareholder under section 951(b).

Example 9. The facts are the same as in *Example 8* except that the stock of *FP* was publicly traded, *FP* had one class of stock, and on the first day of the current taxable year *DP* purchased one share of *FP* stock on the foreign stock exchange instead of purchasing one share of *JV* stock from *FP*. *JV* became a controlled foreign corporation on that day because over 50 percent of the total value in the corporation was held by a person that was a United States shareholder under section 951(b).

Example 10. *X*, a foreign corporation, is incorporated under the laws of country *Y*. Under the laws of country *Y*, *X* is considered a mutual insurance company. *X* issues insurance policies that provide the policyholder with the right to vote for directors of the corporation, the right to a share of the assets upon liquidation in proportion to premiums paid, and the right to receive policyholder dividends in proportion to premiums paid. Only policyholders are provided with the right to vote for directors, share in assets upon liquidation, and receive distributions. United States policyholders contribute 25 percent of the premiums and have 25 percent of the outstanding rights to vote for the board of directors. Based on these facts, the United States policyholders are United States shareholders owning the requisite combined voting power and value. Thus, *X* is a controlled foreign corporation for purposes of taking into account related person insurance income under section 953(c).

(d) *Effective date.* Paragraphs (a) and (c) *Examples 8* through *10* of this section are effective for taxable years of a controlled foreign corporation beginning after November 6, 1995.

§ 1.954A–1 and 1.954A–2 [Removed]

Par. 5. Sections 1.954A–1 and 1.954A–2 are removed.

§ 1.957–1T [Removed]

Par. 6. Section 1.957–1T is removed.

PART 4—[ADDED]

Par. 7. 26 CFR part 4 is added to read as follows:

PART 4—TEMPORARY INCOME TAX REGULATIONS UNDER SECTION 954 OF THE INTERNAL REVENUE CODE

Sec.

Authority: 26 U.S.C. 7805.

Sec.

4.954–0 also issued under 26 U.S.C. 954 (b) and (c).
4.954–1 also issued under 26 U.S.C. 954 (b) and (c).
4.954–2 also issued under 26 U.S.C. 954 (b) and (c).

§§ 1.954–0T, 1.954–1T and 1.954–2T [Redesignated as §§ 4.954–0, 4.954–1 and 4.954–2]

Par. 8. Sections 1.954–0T, 1.954–1T and 1.954–2T are redesignated as §§ 4.954–0, 4.954–1 and 4.954–2, respectively, and the language ''temporary'' is removed at the end of each section heading.

Par. 9. Newly designated § 4.954–0 is amended by:

1. Removing the language ''§§ 1.954–1T and 1.954–2T'' from the first sentence of paragraph (a)(1) and adding ''§§ 4.954–1 and 4.954–2'' in its place.

2. Adding a sentence at the end of paragraph (a)(1) to read as set forth below.

3. In paragraph (b) by removing the entries numbered (I), (II), and (III) and adding in their places entries for the headings of §§ 4.954–0 through 4.954–2 as follows:

§ 4.954–0 Introduction.

(a) * * * (1) * * * For further guidance, see § 1.954–0(a) of this chapter.

(b) * * *

Sec.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In § 602.101, paragraph c is amended by:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.954–1T	1545–1068
1.954–2T	1545–1068
1.954A–2	1545–0755

2. Adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.954–1	1545–1068
1.954–2	1545–1068
* * * * *	
4.954–1	1545–1068
4.954–2	1545–1068
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: August 22, 1995.

Cynthia Gibson Beerbower,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–21838 Filed 9–6–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 801

Application of the Employee Polygraph Protection Act of 1988

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The purpose of this document is to change the address which is used to request an administrative hearing on a civil money penalty assessment. This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based.

EFFECTIVE DATE: This rule is effective September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur M. Kerschner Branch of Child Labor and Polygraph Standards, Wage and Hour Division, Employment

Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 219–7640. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

II. Background

Employers who violate any of the provisions of the Employee Polygraph Protection Act (EPPA) may be assessed civil money penalties up to $10,000. Under § 801.53, any person desiring to request an administrative hearing on a civil money penalty assessment must do so in writing within 30 days after the date of receipt of the notice. Additionally, § 801.53 specifies that the written hearing request shall be made to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based. Accordingly, all such hearing requests are now to be made to the Wage and Hour official that issued the determination in care of the address of the office that originated the determination.

III. Summary of Rule

Section 801.53 of Regulations, 29 CFR part 801, is amended to provide for a new address for purposes of requesting administrative hearings. Hearing requests are now directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Under the amended regulation, these requests will be directed to the Wage and Hour Division official who issued the determination, at the address appearing on the determination notice.

Executive Order 12868/Section 202 of the Unfunded Mandates Reform Act of 1995

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866, nor does it require a section 202 statement under the Unfunded Mandates Reform Act of 1995. The rule merely adopts a technical address change, which will facilitate the timeliness and handling of the hearing process. Accordingly, these changes are not expected 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 Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 et seq. pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). The rule simplifies the handling of hearing requests and will not have a significant economic impact on a substantial number of small entities.

Administrative Procedure Act

This regulation is procedural in nature. Accordingly, the Secretary, for good cause, finds pursuant to 5 U.S.C. 553(b)(3), that prior notice and public comment are unnecessary, impracticable, and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule should take effect immediately because it is merely a technical procedural change which does not affect any substantive rights.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 801

Employment, Investigations, Labor, Law enforcement, Penalties.

For the reasons set forth above, 29 CFR part 801 is amended as set forth below.

Signed at Washington, DC, on this 31st day of August 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 801—[AMENDED]

1. The authority citation for part 801 continues to read as follows:

Authority: Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. 2001–2009.

2. Paragraph (a) of § 801.53 is revised to read as follows:

§ 801.53 Request for hearing.

(a) Any person desiring to request an administrative hearing on a civil money penalty assessment pursuant to this part shall make such request in writing to the official who issued the determination at the Wage and Hour Division address appearing on the determination notice, no later than 30 days after the date of receipt of the notice referred to in § 801.51 of this part.

* * * * *

[FR Doc. 95–22140 Filed 9–6–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG85

Evidence Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, an interim rule that amends Department of Veterans Affairs (VA) adjudication regulations concerning the evidence required to establish birth, death, marriage, or relationship. This amendment was necessary to expedite the payment of benefits by allowing VA to accept photocopies of documents necessary to establish birth, death, marriage, or relationship. The intended effect of this amendment is to improve the efficiency and timeliness of claims processing.

EFFECTIVE DATE: This document is effective September 7, 1995 (The interim rule was effective September 8, 1994).

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

SUPPLEMENTARY INFORMATION: On September 8, 1994, VA published in the **Federal Register** an interim rule with request for comments (59 FR 46337). The rule revised VA regulations concerning evidence requirements to permit claimants to use uncertified photocopies of documents to establish birth, death, marriage, and relationship. Previous regulations required that a copy of a document be certified over the signature and official seal of the custodian of the record. We requested that comments to the interim rule be submitted on or before November 7, 1994. We received 11 comments, most from officials of state agencies charged with maintaining and issuing vital records.

The commenters were unanimous in their opinion that by accepting photocopies VA increases the likelihood that it will erroneously award benefits based on altered documents.

We currently have adequate safeguards against erroneously awarding benefits on the basis of altered photocopies. Under 38 CFR 3.216, we require all compensation, pension, or dependency and indemnity compensation recipients or claimants to furnish VA the social security numbers of all dependents on whose behalf benefits are claimed or received. Under the authority of 38 U.S.C. 5317, VA may exchange data with other federal agencies to verify information from VA beneficiaries concerning family members and family income. As an additional safeguard, we have retained in this rule the right to request a certified copy of a document if we are not satisfied that the photocopy submitted is genuine or unaltered. In light of these safeguards, we can, in our judgment, accept uncertified copies without compromising the integrity of our benefit programs.

Several commenters saw no need for VA to accept uncertified copies as a measure to expedite claims processing. Six of these remarked that it is generally not difficult to obtain certified copies, and 8 stated that many states provide copies free of charge if they are to be used to pursue a claim for VA benefits.

Our experience shows that VA's former requirement for certified copies did delay claims processing. Claimants spent additional time trying to satisfy that requirement, partly because many did not understand what VA meant by a certified copy or how to obtain one, especially from a state other than where they live. We realize that some states do provide VA claimants certified copies at no cost. However, if claimants are unaware that certified copies for VA claims are free or fail to indicate that the copies are needed to obtain VA benefits, they may be charged. VA claimants should not incur the delay, expense, or inconvenience of obtaining certified copies of documents if uncertified photocopies will satisfy VA's needs.

Four commenters remarked that, inasmuch as some states have laws that prohibit copying certified copies of vital records, VA's acceptance of uncertified copies could encourage claimants to violate state laws.

This rule does not require that claimants submit photocopies of vital records. It merely provides that option to simplify the proof of claims. Responsibility for obeying state laws lies with the persons subject to those laws. In any event, the fact that some states prohibit copying certified copies is no reason to hold all claimants to higher evidentiary standards.

One commenter suggested that VA request certified copies, photocopy them for the claimants' records, and return them to the claimants, since claimants must have a certified copy to photocopy in the first place.

Many claimants submit original documents in conjunction with benefit claims, which we routinely return after making copies for our records. If a claimant submits a certified copy and requests its return after we have copied it for our records, we honor that request. However, the claimant still has the responsibility of submitting an original document or a certified copy, and, consequently, the procedure does nothing to expedite claims processing. Furthermore, under this procedure, the original document or the certified copy might be lost in the mail and have to be replaced. Under this new rule, the claimant could keep the original or certified copy and submit a photocopy to VA.

One commenter suggested that, if VA's main concern is improving public service without regard to cost, VA eliminate the requirement for any form of documentation other than a signature on a claims form.

In fact, section 301(a) of the ''Veterans' Benefits Improvements Act of 1994,'' Public Law 103–446, approved November 2, 1994, authorizes VA to accept the written statement of a claimant as proof of marriage, dissolution of a marriage, birth of a child, and death of any family member. The statute further provides that VA may require documentation in certain situations. This law was enacted after publication of our interim rule on evidence requirements. Whether VA should accept claimants' statements as proof of relationships is a separate issue that we may address in future rulemaking.

Three commenters expressed concerns that the members of the Blue Ribbon Panel on Claims Processing (the Panel), which made the recommendation implemented by this rulemaking, had little operational experience dealing with vital records. The commenters felt that the Panel would have benefited from the advice and recommendations of other federal agencies that use vital records or of members of the Association for Vital Records and Health Statistics (AVRHS), who are the primary keepers of vital records.

The mandate of the Panel was to develop recommendations to shorten the time it takes VA to make decisions on disability claims and reduce the backlog of claims, which had reached critical levels at many regional offices. Accordingly, the Panel's membership comprised VA officials and representatives from veterans' service organizations with extensive knowledge of VA claims adjudication. The Panel made 43 recommendations covering a broad spectrum of claims-processing procedures, including measures to expedite development of evidence needed for the adjudication of pending claims. The Panel neither included anyone with expertise in vital records nor sought the advice of such experts, but we are unaware of how such expertise would have helped the Panel to develop recommendations to shorten VA's claims processing time and to reduce the claims backlog. Furthermore, although the Panel did not seek advice from vital-records experts, the comment period provided by the interim rule that implemented the Panel's recommendation gave the opportunity for such input.

One commenter stated that many state and county Vital Records offices rely on the revenue obtained from issuing certified copies. Wide-spread acceptance of uncertified photocopies would decrease this revenue and possibly force some of these self-supporting offices to increase the price of certified copies.

Although we understand the commenter's concerns, the purpose of this rule is to improve the efficiency and timeliness of processing claims for VA benefits. We find that the possible decrease in vital records offices' revenue does not warrant imposing on claimants more stringent evidence requirements than are necessary, in our judgment, to establish entitlement.

VA appreciates the interest of the commenters and thanks them for their thoughtful remarks. We are here

affirming as a final rule, without change, the interim rule published at 59 FR 46337.

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

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

List of Subjects in 38 CFR Part 3

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

The interim rule published September 8, 1994, in the **Federal Register** (59 FR 46337) amending 38 CFR part 3 is adopted as final without change.

Approved: August 28, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–22128 Filed 9–6–95; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG98

Veterans Education: Increases in Rates Payable in the Educational Assistance Test Program

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1991–92 academic year should be increased by 6% over the rates payable for the 1990–91 academic year; the rates for the 1992–93 academic year should be increased by 8% over the rates payable for the 1991–92 academic year; the rates for the 1993–94 academic year should be increased by 7% over the rates payable for the 1992–93 academic year; and the rates for the 1994–95 academic year should be increased by 8% over the rates payable for the 1993–94 academic year. The regulations dealing with these rates are amended accordingly.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 6% in the 1990–91 academic year, by 8% in the 1991–92 academic year, by 7% in the 1992–93 academic year, and by 8% in the 1993–94 academic year. Accordingly, this revision changes 38 CFR 21.5820 and 21.5822 to reflect each increase in the rates payable in the subsequent academic year.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 there is good cause for finding that notice and public procedure are impractical, unnecessary, and contrary to the public interest and there is good cause for dispensing with a 30 day delay of the effective date. The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test program are determined based on a statutory formula and, in essence, the calculation of rates merely constitute a non discretionary ministerial act.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to the 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, claims, Education, Grant programs-education, Loan programs-education, Reporting and record keeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 27, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

Approved: August 28, 1995.

Samuel E. Ebbesen,

Lieutenant General, USA, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart H is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H continues to read as follows:

Authority: 10 U.S.C. Ch. 107, Pub. L. 96–342.

2. In § 21.5820, paragraph (b) is revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of educational assistance.* (1) The amount of educational assistance shall be adjusted annually by regulation.

(i) For the 1991–92 standard academic year the amount of this assistance may not exceed $2,087.

(ii) For the 1992–93 standard academic year the amount of this assistance may not exceed $2,254.

(iii) For the 1993–94 standard academic year the amount of this assistance may not exceed $2,412.

(iv) For the 1994–95 standard academic year the amount of this assistance may not exceed $2,605.

(2) The amount of educational assistance payable to a servicemember, veteran, spouse or dependent child of a living servicemember or veteran for an

enrollment period shall be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period.

(ii) For the 1991–92 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $231.89 for a full-time student or by $115.94 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $7.73 for a full-time student or by $115.94 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by 1¢ for a full-time student and increased by 4¢ for a part-time student.

(iii) For the 1992–93 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $250.44 for a full-time student or by $125.22 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $8.35 for a full-time student or by $4.17 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be increased by 4¢ for a full-time student and increased by 2¢ for a part-time student.

(iv) For the 1993–94 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $268.00 for a full-time student or by $134.00 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $8.93 for a full-time student or by $4.47 for a part-time student; and

(C) Adding the two results.

(v) For the 1994–95 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $289.44 for a full-time student or by $144.72 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $9.65 for a full-time student or by $4.82 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be increased by 4¢ for a full-time student and increased by 2¢ for a part-time student.

(3) The amount of educational assistance payable to each surviving spouse or dependent child of a decreased servicemember or veteran for an enrollment period shall be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period.

(ii) For the 1991–92 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $231.89 for a full-time student or by $115.94 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $7.73 for a full-time student or by $3.86 for a part-time student;

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by 1¢ for a full-time student and increased by 4¢ for a part-time student; and

(D) Dividing the amount determined in paragraph (b)(3)(ii)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(ii)(C) of this section will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided.

(iii) For the 1992–93 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $250.44 for full-time student or by $125.22 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $8.35 for a full-time student or by $4.17 for a part-time student;

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be increased by 4¢ for a full-time student and increased by 2¢ for a part-time student; and

(D) Dividing the amount determined in paragraph (b)(3)(iii)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(iii)(C) of this section will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided.

(iv) For the 1993–94 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $268.00 for a full-time student or by $134.00 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $8.93 for a full-time student or by $4.47 for a part-time student;

(C) Adding the two results; and

(D) Dividing the amount determined in paragraph (b)(3)(iv)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(iv)(C) of this section will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided.

(v) For the 1994–95 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $289.44 for a full-time student or by $144.72 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $9.65 for a full-time student or by $4.82 for a part-time student;

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be increased by 4¢ for a full-time student and increased by 2¢ for a part-time student; and

(D) Dividing the amount determined in paragraph (b)(3)(v)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(v)(C) of this section will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving

educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will be divided.

* * * * *

3. In § 21.5822, paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii) are revised, to read as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(b) *Amount of subsistence allowance.*

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is:

(A) $520 per month for training pursued during the 1991–92 academic year;

(B) $562 per month for training pursued during the 1992–93 academic year;

(C) $601 per month for training pursued during the 1993–94 academic year; and

(D) $649 per month for training pursued during the 1994–95 academic year.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is:

(A) $260 per month for training pursued during the 1991–92 academic year;

(B) $281 per month for training pursued during the 1992–93 academic year;

(C) $300.50 per month for training pursued during the 1993–94 academic year; and

(D) $324.50 per month for training pursued during the 1994–95 academic year.

* * * * *

(2) * * *

(i) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time as follows:

(A) For the 1991–92 academic year VA will divide $520 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day;

(B) For the 1992–93 academic year VA will divide $562 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day;

(C) For the 1993–94 academic year VA will divide $601 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day; and

(D) For the 1994–95 academic year VA will divide $649 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than full-time basis as follows:

(A) For the 1991–92 academic year VA will divide $281 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day;

(B) For the 1992–93 academic year VA will divide $281 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day;

(C) For the 1993–94 academic year VA will divide $300.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day; and

(D) For the 1994–95 academic year VA will divide $324.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

* * * * *

[FR Doc. 95–22004 Filed 9–6–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 95–8–7057; FRL–5279–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District, San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on December 2, 1993 and February 2, 1995. The revisions concern rules from the following: Placer County Air Pollution Control District (PCAPCD), San Diego County Air Pollution Control District (SDCAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and Ventura County Air Pollution Control District (VCAPCD). 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 deficiencies in the rules that started sanctions clocks have been corrected and that any sanctions or Federal Implementation Plan (FIP) obligations triggered by those deficiencies have been permanently stopped. The rules control VOC emissions from marine vessel coating; graphic arts operations; paper, fabric and film coating; and storage of organic liquids. Thus, EPA is finalizing the approval of these rules into the California 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 DATE: This action is effective on October 10, 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, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Placer County Air Pollution Control District, 11464 B. Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

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 December 2, 1993 EPA proposed approval of VCAPCD Rule 74.3, ''Paper, Fabric, and Film Coating Operations,'' 58 FR 63545. On February 2, 1995, 60 FR 6467, EPA proposed approval of the

following rules into the California SIP: Rule 4607, ''Graphic Arts,'' as adopted by SJVUAPCD on May 19, 1994; Rule 212, ''Storage of Organic Liquids,'' as adopted by PCAPCD on November 3, 1994; and Rules 67.16 (''Graphic Arts Operations'') and 67.18 (''Marine Coating Operations''), as adopted by SDCAPCD on September 20, 1994, and December 13, 1994, respectively. These rules were submitted by the California Air Resources Board to EPA on: June 19, 1992 (VCAPCD Rule 74.3); July 13, 1994 (SJVUAPCD Rule 4607); October 19, 1994 (SDCAPCD Rule 67.16); December 19, 1994 (PCAPCD Rule 212); and December 22, 1994 (SDCAPCD Rule 67.18). 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 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 EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 58 FR 63545 and 60 FR 6467 and in technical support documents (TSDs) available at EPA's Region IX office. These TSDs are dated: September 23, 1993 (VCAPCD 74.3), December 28, 1994 (PCAPCD Rule 212), and January 20, 1995 (SDCAPCD Rules 67.16 and 67.18, and SJVUAPCD Rule 4607).

Response to Public Comments

A 30-day public comment period was provided in 58 FR 63545 and 60 FR 6467. 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 California 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.

In 60 FR 6401, EPA published an Interim Final Rule that served to temporarily defer the imposition of sanctions associated with SJVUAPCD Rule 4607, PCAPCD Rule 212, and SDCAPCD Rules 67.16 and 67.18. As discussed in the Interim Final Rule, two sanctions clocks were started for each of these rules as a result of EPA's limited disapproval of a previous version of the rules. This Final Rule serves to permanently remove both sanctions clocks associated with the above rules. VCAPCD Rule 74.3 does not have any sanctions associated with it.

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 California 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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(188)(i)(D)(*3*), (198)(i)(C)(*3*), (202)(i)(C)(*2*), (208)(i)(A)(*2*), and (210)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(188) * * *

(i) * * *

(D) * * *

(*3*) Rule 74.3, adopted on December 10, 1991.

* * * * *

(198) * * *

(i) * * *

(C) * * *

(*3*) Rule 4607, adopted on May 19, 1994.

* * * * *

(202) * * *

(i) * * *

(C) * * *

(*2*) Rule 67.16, adopted on September 20, 1994.

* * * * *

(208) * * *

(i) * * *

(A) * * *

(*2*) Rule 212, adopted on November 3, 1994.

* * * * *

(210) * * *

(i) * * *

(B) San Diego County Air Pollution Control District.

(*1*) Rule 67.18, adopted on December 13, 1994.

* * * * *

[FR Doc. 95–22136 Filed 9–6–95; 8:45 am]

BILLING CODE 6560–50–W

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 69

[CC Docket No. 91–141; DA 95–1287]

Expanded Interconnection With Local Telephone Company Facilities; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule [FCC 94–190, 9 FCC Rcd 5154], which was summarized and published in the **Federal Register** on Monday, August 1, 1994 [59 FR 38922]. The rule related to the Commission's policies on expanded interconnection with local telephone company facilities.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: David Sieradzki (202) 418–1576 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

In the Memorandum Opinion and Order that is the subject of these corrections, the FCC reaffirmed its commitment to its expanded interconnection policy, which creates new opportunities for competitive provision of access services that the local telephone companies traditionally have provided on a monopoly basis, and required certain companies to provide expanded interconnection through virtual collocation.

Need for Correction

As published, the document contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

In the last sentence of paragraph 62 on page 38929 of the Synopsis of Memorandum Opinion and Order [59 FR 38922, Aug. 1, 1994], FR Doc. 94–18589 is corrected to read as follows:

We delegate authority to the Chief, Common Carrier Bureau, to modify the threshold point for switched transport volume and term discounts in unusual circumstances where a change in the strict requirements would advance the Commission's objectives.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22002 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 89–552, GN Docket No. 93–252, and PP Docket No. 93–253; FCC 95–312]

Wireless Telecommunications Services; Private Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this *Second Memorandum Opinion and Order* portion of the adopted *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking,* the Commission denies a Petition for Reconsideration filed by SunCom Mobile & Data, Inc., denies waiver requests filed by Northeast Florida Telephone Company, Wireless Plus, Inc., and the 220 MHz QO Coalition, grants a Petition to Sever filed by SunCom Mobile & Data, Inc., and extends the deadline for non-nationwide 220 MHz licensees authorized within Line A of the Canadian border to construct and operate their stations to a date 12 months after the date that the terms of an agreement with Canada are released. These actions are taken in response to these requests and petitions.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Martin Liebman, Wireless Telecommunications Bureau (202) 418–1310, or Rhonda Lien, Wireless Telecommunications Bureau (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Memorandum Opinion and Order* portion of the Commission's *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking* in PR Docket No. 89–552, GN Docket No. 93–252, and PP Docket No. 93–253, FCC 95–312, adopted July 28, 1995, and released August 28, 1995. The summary of the *Third Notice of Proposed Rulemaking* portion of this decision may be found elsewhere in this edition of the **Federal Register**. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of the Second Memorandum Opinion and Order Portion of the Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking

1. The Commission, in a *Third Report and Order* in GN Docket 93–252 (59 FR 59945, November 21, 1994) denied a Request for Declaratory Ruling filed by SunCom Mobile & Data, Inc. (SunCom) which sought approval to aggregate non-nationwide 220 MHz five-channel blocks on a regional basis to provide multiple-market service on a single system. The Commission denied a concurrently filed waiver request by SunCom to allow an extended period for the construction of its system. SunCom filed a Petition for Reconsideration of these decisions. Wireless Plus, Inc., a manager of 220 MHz stations, filed a waiver request similar to SunCom's Request for Declaratory Ruling. The Commission now denies these three requests.

2. SunCom also filed a Petition to Sever its Requests for Declaratory Ruling and for Waiver from GN Docket No. 93–252, and from other petitions for reconsideration of the *Third Report and Order* in GN Docket 93–252. SunCom asked that the Commission act expeditiously on its Petition for Reconsideration. The Commission is incorporating SunCom's Petition for Reconsideration into this proceeding for disposition, and its Petition to Sever is therefore granted.

3. The Commission received waiver requests from the 220 MHz QO Coalition and Northeast Florida Telephone Company seeking waiver of our rules to permit licensees authorized on Channels 171–180 to operate in the trunked mode. The Commission denies both of these requests.

4. The Commission extends the construction deadline for Phase I non-nationwide 220 MHz licensees located within Line A of the Canadian border until 12 months after the signing of an agreement with Canada on the sharing of 220–222 MHz channels near the border.

5. Authority for issuance of the decision is contained in Sections 4(i), 303(r), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 303(r), and 332.

Ordering Clauses

6. Accordingly, IT IS ORDERED that the Petition to Sever filed by SunCom Mobile & Data, Inc., IS GRANTED.

7. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by SunCom Mobile & Data, Inc., IS DENIED.

8. IT IS FURTHER ORDERED that the Request for Rule Waiver filed by Wireless Plus, Inc., IS DENIED.

9. IT IS FURTHER ORDERED that the Request for Rule Waiver filed by the 220 MHz QO Coalition IS DENIED.

10. IT IS FURTHER ORDERED that the Petition for Rule Waiver filed by Northeast Florida Telephone Company IS DENIED.

11. IT IS FURTHER ORDERED that the deadline for non-nationwide 220 MHz licensees authorized within Line A of the Canadian border to construct and operate their stations is extended to a date 12 months after the date that the terms of an agreement with Canada are released.

List of Subjects in 47 CFR Part 90

Business and industry, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22295 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 941265–4365; I.D. 083095B]

Pacific Coast Groundfish Fishery; Thornyhead Trip Limits and Nontrawl Sablefish Mop-Up Fishery

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

ACTION: Inseason adjustments and nontrawl sablefish mop-up fishery; request for comments.

SUMMARY: NMFS announces adjustments to the management measures for the Pacific coast groundfish fishery off Washington, Oregon, and California. This action will reduce the limited entry trip limits for thornyheads, establish beginning and ending dates and trip limits applicable to the mop-up fishery for nontrawl limited entry sablefish, and set trip limits for the nontrawl limited entry sablefish fishery after the mop-up fishery. These actions are intended to extend the thornyhead fishery as long as possible during the year, and to provide for harvest of the remainder of the limited entry nontrawl allocation for sablefish.

DATES: The thornyhead trip limits are effective from 0001 hours (local time), September 1, 1995, until the effective date of the 1996 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. The nontrawl sablefish mop-up fishery will begin at 1201 hours (local time), September 1, 1995, and will end at 1200 hours (local time), September 30, 1995, at which time the daily trip limits resume. The daily trip limits for the nontrawl sablefish fishery will remain in effect until the effective date of the 1996 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted until Septemnber 18, 1995.

ADDRESSES: Comments on these actions should be sent to Mr. William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Ms. Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these actions has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney R. McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION:

Thornyheads. The Annual Specifications and Management Measures for the Pacific Coast Groundfish Fishery (60 FR 2331–2344, January 9, 1995), as amended, established management measures for the 1995 limited entry fishery for Dover sole, thornyheads, and trawl-caught sablefish (the DTS complex). At its August 1995 meeting in San Francisco, CA, the Pacific Fishery Management Council (Council) considered the best available scientific information, comments from its advisory committees, and public testimony before recommending adjustments to the management measures for the thornyhead fishery, as explained below.

The DTS complex is managed collectively because the four species often are caught together in the trawl fishery. (Thornyheads include both shortspine and longspine thornyheads.) In 1995, the 1,500 metric ton (mt) harvest guideline for shortspine thornyheads was set higher than the 1,000–mt acceptable biological catch (ABC), largely because of uncertainty in the new stock assessment. The stock assessment indicates that the shortspine thornyhead biomass is below the level consistent with maximum sustainable yield (MSY). The harvest guideline for shortspine thornyheads is near the MSY level, but below its overfishing level of about 1,800 mt. In contrast, longspine thornyheads remain above MSY and are being fished down to the level that would produce MSY. However, the 6,000–mt harvest guideline for longspine thornyheads in 1995 is set below its ABC of 7,000 mt, primarily to protect the fully exploited shortspine thornyheads.

At the beginning of 1995, the cumulative trip limit for thornyheads combined was set at 20,000 lb (9,072 kg) per vessel per month, of which no more than 4,000 lb (1,814 kg) could be shortspine thornyheads (60 FR 2331, January 9, 1995). On April 1, 1995 (60 FR 16811, April 3, 1995), the monthly cumulative trip limit for combined thornyheads was reduced by 25 percent to 15,000 lb (6,804 kg), of which no more than 3,000 lb (1,361 kg) could be shortspine thornyheads. Landings have not slowed significantly.

The best available information at the August 1995 Council meeting indicated that if landing rates are not slowed the harvest guidelines for both thornyhead species, and the overfishing level for shortspine thornyheads, will be exceeded by the end of the year. If landing rates are not slowed, the harvest guideline for shortspine thornyheads will be reached by September 20, 1995, and exceeded by 39 percent by the end of the year. The overfishing level for shortspine thornyheads will be exceeded by 16 percent by the end of the year. The harvest guideline for longspine thornyheads will be reached by November 7, 1995, and exceeded by 19 percent by the end of the year. To stay within the harvest guidelines for both species, landings will need to be reduced by 84 percent for shortspine thornyheads, and 46 percent for longspine thornyheads.

The Council considered several alternatives, including immediate prohibition of landings of shortspine thornyheads or the entire DTS complex, and a reduction in trip limits. The Council recommended that the cumulative monthly trip limits for thornyheads be cut almost in half, from 15,000 lb (6,804 kg) to 8,000 lb (3,629 kg) for thornyheads combined, and from 3,000 lb (1,361 kg) to 1,500 lb (680 kg) for shortspine thornyheads. The level of discards that would result from such a small trip limit on shortspine thornyheads is unknown. It is intended that fishers move their operations to deeper water where shortspine

thornyheads are not as abundant. That way, the catch of shortspine thornyheads and discards in excess of the trip limit would be reduced. Under this option, the shortspine thornyhead harvest guideline would be exceeded by about 10 percent by the end of November, but the overfishing level would not be reached. The Council will again consider thornyhead and DTS management at its October 1995 meeting in Portland, OR, and may recommend additional restrictions at that time, including possible closure of the DTS fishery before the end of the year.

NMFS concurs with the Council's recommendation to avoid reaching the overfishing level for shortspine thornyheads, while extending the fishery as long as possible and providing for achievement of the harvest guideline for longspine thornyheads. This action is intended to minimize trip limit induced discards of shortspine thornyheads by encouraging the use of different fishing strategies. No change is made to the cumulative monthly trip limit for the DTS complex or trawl-caught sablefish. As a result, the amount of Dover sole that may be landed increases, compensating for the reduction in the cumulative limits for thornyheads. A cumulative monthly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a calendar month, without a limit on the number of landings or trips.

Nontrawl Sablefish Mop-Up Fishery. The regulations at 50 CFR 663.23(b)(2) established a new season structure for the limited entry nontrawl sablefish fishery in 1995. The beginning of the ''regular season,'' a derby fishery during which the only trip limit is for sablefish smaller than 22 inches (56 cm), was unlinked from the start of the sablefish fishery in the Gulf of Alaska (which could have been as early as late February in 1995) and changed to August 6. Because of expected increases in effort and the difficulty in projecting catch rates during a short, intense season (7 days in 1995), the regular season was designed to harvest only 70 percent of the limited entry nontrawl allocation. The remainder of the nontrawl allocation was set aside as a buffer in case landings were much higher than projected. The Regional Director is authorized to release the buffer, if sufficient amounts remain, about 3 weeks after the end of the regular season, to be taken in a mop-up fishery consisting of one cumulative trip limit for each vessel.

Following the mop-up fishery, daily trip limits are reimposed until the end of the year. A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24–hour period. Daily trip limits may not be accumulated. If a trip lasts more than one day, only one daily trip limit is allowed.

The best available information on September 28, 1995, indicated that approximately 2,274 mt of sablefish had been landed through August 19, 1995, and that about 78 percent of the limited entry nontrawl allocation of 2,754 mt was taken during the regular season. (This includes one week under daily trip limits after the end of the regular season.) Therefore, 480 mt remains to be caught after August 19, 1995. The Regional Director, after consulting with the Council's Groundfish Management Team, has determined that the mop-up fishery will occur in September 1995, and that a cumulative monthly trip limit of 5,500 lb (2,495 kg) would provide for approximately 175 participating vessels, leaving enough for small daily trip limits between August 19 and September 1, 1995, and from 1200 hours September 30, 1995, until the end of the year. The trip limit for sablefish smaller than 22 inches (56 cm) total length (or 15.5 inches (39 cm) for sablefish that are headed) that was in effect during the regular season continues during the mop-up season, but not under the daily trip limits. This trip limit is described in the paragraph preceding the Classification section. Once a vessel has landed its 5,500–lb (2,495 kg) cumulative limit, it may not land more sablefish until the daily trip limits resume on September 30, 1995. A cumulative trip limit applies per limited entry vessel. Therefore, acquiring additional limited entry permits does not entitle a vessel to more than one cumulative limit. (See the definition for a cumulative trip limit at the end of the discussion on thornyheads.)

The daily trip limits for the limited entry fishery after the mop-up season are the same as those in effect before the mop-up season. Since the daily trip limits apply to a 24–hour day starting at 0001 hours, but the mop-up fishery begins and ends at 1200 hours, it will be legal for a vessel in the limited entry fishery to land a daily trip limit between 0001 hours and 1200 hours on September 1, 1995, just before the start of the mop-up season, and between 1201 hours and 2400 hours on September 30, 1995 following the mop-up season.

As specified in the annual management measures (60 FR 2331, January 9, 1995) at paragraph IV.I., a vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery or for the same gear and/or subarea in the limited entry fishery.

NMFS Actions

NMFS announces: (1) The following changes to the management measures for the limited entry fishery for thornyheads (60 FR 2331–2344, January 9, 1995) as modified (60 FR 16811, April 3, 1995), and (2) the dates of the nontrawl sablefish limited entry mop-up fishery and the amounts of sablefish that may be taken with nontrawl gear during and after the limited entry mop-up fishery in 1995 (60 FR 34472, July 3, 1995). All other provisions remain in effect.

1. *Thornyheads*. In paragraphs IV.E.(3)(b)(ii)(*A*) and (*B*), the cumulative monthly trip limits for thornyheads are revised as follows:

(*A*) *North of Cape Mendocino*. The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 35,000 lb (15,876 kg) per vessel per month. Within this cumulative trip limit, no more than 7,000 lb (3,175 kg) may be sablefish, and no more than 8,000 lb (3,629 kg) may be thornyheads. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads.

(*B*) *South of Cape Mendocino*. The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 50,000 lb (22,680 kg) per vessel per month. Within this cumulative trip limit, no more than 7,000 lb (3,175 kg) may be sablefish, and no more than 8,000 lb (3,629 kg) may be thornyheads. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads. (Note: Cape Mendocino, CA, is at 40°30′ N. lat.)

2. *Nontrawl sablefish mop-up season*. In paragraph IV.E.(3)(c), the trip limits for sablefish caught with nontrawl gear in the limited entry fishery are revised as follows:

(i) *Mop-Up Fishery*. Effective 1201 hours September 1, 1995, until 12 noon September 30, 1995, the cumulative trip limit for sablefish caught with nontrawl gear in the limited entry fishery is 5,500 lb (2,495 kg) per vessel.

(Note: The States of Washington, Oregon, and California use a conversion factor of 1.6 to convert dressed sablefish to its round-weight equivalent. Therefore, 5,500 lb (2,495 kg) round weight corresponds to 3,438 lb (1,559 kg) for dressed sablefish.)

(ii) *Daily trip limits*. Effective 1201 hours September 30, 1995, daily trip

limits, which apply to sablefish of any size, are reimposed as follows:

(*A*) *North of 36*° N. lat. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36° N. lat. is 300 lb (136 kg).

(*B*) *South of 36*° N. lat. The daily trip limit for sablefish taken and retained with nontrawl gear south of 36° N. lat. is 350 lb (159 kg).

(iii) During the regular and mop-up seasons the trip limit for sablefish smaller than 22 inches (56 cm) total length is 1,500 lb (680 kg) or 3 percent of all legal sablefish on board, whichever is greater, per vessel per fishing trip. (See paragraph IV.A.(6) of the annual management measures at (60 FR 2331, January 9, 1995) regarding length measurement.

Classification

These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Director (see **ADDRESSES**) during business hours. Because of the need for immediate action to reduce the harvest of shortspine thornyheads and to start the mop-up fishery for sablefish, and because the public had an opportunity to comment on these actions at the August 1995 Council meeting, NMFS has determined that good cause exists for this notice to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 663.(b)(2) and (c)(1)(i)(G), and are exempt from review under E.O. 12866.

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

Dated: August 31, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22188 Filed 9–1–95; 3:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 173
Thursday, September 7, 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

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–196–AD]

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes. This proposal would require a functional flow test and leak test to verify if the pressure reducing valve in the cargo fire extinguishing system is in a serviceable condition, and replacement of any faulty valve with a new valve prior to extended range twin-engine operations of the airplane. This proposal is prompted by a report that, during a scheduled maintenance check, an inoperative pressure reducing valve was found in the cargo fire extinguishing system. The actions specified by the proposed AD are intended to ensure that a faulty pressure reducing valve is not installed, which could result in reduced fire protection of the cargo compartment of the airplane.

DATES: Comments must be received by October 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–196–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Model A310 and A300–600 series airplanes. The DGAC advises that it received a report indicating that, during a scheduled maintenance check, an inoperative pressure reducing valve was found in the cargo fire extinguishing system. The valve had accumulated 10,587 total flight hours. The cargo fire extinguishing system is equipped with two fire extinguishing bottles. In a smoke warning incident, bottle number one is manually activated. After 60 minutes, bottle number two is discharged to maintain the required halon concentration for an additional 200 minutes for extended range twin-engine operations (ETOPS), yielding (giving) a total cargo fire protection time of 260 minutes. The discharge of bottle number two is regulated by the pressure reducing valve. A faulty pressure reducing valve, if not corrected, could result in reduced fire protection of the cargo compartment of the airplane from 260 minutes to 60 minutes.

Airbus has issued All Operators Telex AOT 26–13, dated June 28, 1994, which describes procedures for a functional flow test and leak test to verify if the pressure reducing valve in the cargo fire extinguishing system is in a serviceable condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 94–186–164(B), dated August 17, 1994, in order to assure the continued airworthiness of these airplanes in France. In addition, the French airworthiness directive specifies that ETOPS flights are not permitted if a faulty valve is found and not replaced.

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

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

develop on other airplanes of the same type design, the proposed AD would require a functional flow test and leak test to verify if the pressure reducing valve in the cargo fire extinguishing system is in a serviceable condition. The tests would be required to be accomplished in accordance with the all operators telex described previously.

The proposed AD would also require that, if a faulty pressure reducing valve is installed, it must be replaced with a new valve prior to further operation of the airplane under ETOPS. The replacement would be required to be accomplished in accordance with the aircraft maintenance manual.

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

The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,880, or $60 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 94–NM–196–AD.

Applicability: Model A310 and A300–600 series airplanes on which Airbus Modification 6403 (reference Airbus Service Bulletin A310–26–2010 or A300–600–26–6011) has been installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that a faulty pressure reducing valve in the cargo fire extinguishing system is not installed, which could result in reduced fire protection of the cargo compartment of the airplane from 260 minutes to 60 minutes, accomplish the following:

(a) Prior to the accumulation of 600 total flight hours after the effective date of this AD, perform a functional flow test and leak test to verify if the pressure reducing valve in the cargo fire extinguishing system is in a serviceable condition, in accordance with paragraph 4.2., Description, of Airbus All Operators Telex AOT 26–13, dated June 28, 1994. If a faulty pressure reducing valve is installed, prior to extended range twin-engine operations (ETOPS), replace it with a new valve, in accordance with the aircraft maintenance manual, reference 26–23–14, Page block 401.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

Issued in Renton, Washington, on August 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22210 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–53–AD]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes,

that currently requires replacement of electrical wiring to the fuel shutoff valve for each engine. This action would require replacement of the fuel shutoff valve wire and sleeve with a wire in two non-metallic sleeves in the conduit in the struts of each engine. This proposal is prompted by reports of additional occurrences of chafing and shorting of the wiring of the engine fuel shutoff valves. The actions specified by the proposed AD are intended to prevent such chafing and shorting, which could result in the pilot's inability to shut off the supply of fuel in the event of an engine fire.

DATES: Comments must be received by November 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2793; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–53–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 12, 1989, the FAA issued AD 89–14–04, amendment 39–6246 (54 FR 27157, June 28, 1989), applicable to certain Boeing Model 747–400 series airplanes, to require replacement of electrical wiring to the fuel shutoff valve for each engine. That action was prompted by reports of the fuel shutoff valve wiring shorting to the surrounding electrical conduit, which resulted in circuit breaker tripping and inability to operate the associated fuel shutoff valve. The requirements of that AD are intended to preserve the pilot's ability to shut off the supply of fuel in the event of an engine fire.

Since the issuance of that AD, the FAA has received reports of additional occurrences of chafing and shorting of the wiring of the engine fuel shutoff valves on Model 747–400 series airplanes. Subsequently, Boeing developed a new installation consisting of a wire in two sleeves (non-metallic, open weave braided sleeve inside industrial wall thickness teflon) that will improve the protection of the fuel shutoff valve wire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–28A2186, dated January 19, 1995, which describes procedures for replacement of the fuel shutoff valve wire and sleeve with a wire in two non-metallic sleeves in the conduit in the struts of each engine.

The FAA has determined that accomplishment of this replacement of the fuel shutoff valve wire and sleeve with a wire with two non-metallic sleeves in the conduit in the struts of each engine will positively address the unsafe condition identified as inability to shut off the supply of fuel to an engine.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 89–14–04 to require replacement of the wire and sleeve with a single wire in two non-metallic sleeves in the conduit in the struts of each engine. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

The modification that was previously required by AD 89–14–04 will effectively be removed when the modification required by this proposed AD is installed. Additionally, those airplanes on which the previously-required modification had not been accomplished will require no additional work with the installation of the new proposed modification.

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

There are approximately 311 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $673 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $207,974, or $5,473 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6246 (54 FR 27157, June 28, 1989), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–53–AD. Supersedes AD 89–14–04, Amendment 39–6246.

Applicability: Model 747–400 series airplanes; line positions 696 through 1046 inclusive, except airplane variable numbers RT502 and RU032 (airplane serial numbers 24062 and 25780, respectively); certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to shut off the supply of fuel in the event of an engine fire, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace the fuel shutoff valve wire and sleeve with a wire in two non-metallic sleeves in the conduit in the struts of each engine, in accordance with Boeing Alert Service Bulletin 747–28A2186, dated January 19, 1995.

Note 2: Replacements accomplished prior to the effective date of this amendment in accordance with Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, or Revision 1, dated August 3, 1995; or Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, or Revision 1, dated July 20, 1995; are considered acceptable for compliance with the replacements specified in this amendment.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

Issued in Renton, Washington, on August 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22211 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–244–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), which would have superseded an existing AD that is applicable to McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. The existing AD currently requires the implementation of a program of structural inspections to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. The previously proposed action would have required, among other things, clarification of some Principle Structural Elements (PSE) and some non-destructive inspection (NDI) procedures. The previously proposed action was prompted by new data submitted by the manufacturer indicating that certain revisions to the program are necessary in order to clarify some PSE's and some NDI procedures. This action revises the proposed rule by deleting the requirement to perform visual inspections of Fleet Leader Operator Sampling (FLOS) PSE's. The actions specified by this proposed AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: Comments must be received by October 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Contract Data Management C1–255 (35–22) This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–244–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 17, 1995 (60 FR 19185). That NPRM would have required the implementation of a program of structural inspections to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. That NPRM was prompted by new data submitted by the manufacturer indicating that certain revisions to the program are necessary in order to clarify some Principle Structural Elements (PSE) and some non-destructive inspection (NDI) procedures. Fatigue cracking in PSE's could compromise the structural integrity of these airplanes.

Since the issuance of that NPRM, the FAA has received several comments from the manufacturer that have caused the FAA to reconsider its position on certain aspects of the proposed rule.

Changes to the Proposal

McDonnell Douglas requests a revision of paragraph (b)(1) of the proposal for purposes of clarification. The manufacturer notes that the proposal states that operators are required to inspect aircraft before the threshold (N_{th}); however, the proposal does not clearly indicate that operators do not receive credit for these inspections in the Supplemental Inspection Document (SID) program, unless the aircraft has exceeded one-half of that threshold ($N_{th}/2$). The FAA concurs. The FAA has revised proposed paragraph (b)(1) to indicate that the inspections are to be performed prior to reaching the threshold (N_{th}), but no earlier than $N_{th}/2$.

McDonnell Douglas also requests the deletion of the requirement to visually inspect fleet leader-operator sampling (FLOS) PSE's that are proposed in paragraph (b)(3). The manufacturer states that these requirements are redundant to those required by AD 92–22–09 R1, amendment 39–8590 (58 FR 32278, June 9, 1993), which requires the implementation of a corrosion prevention and control program to inspect all primary structures, including all PSE's.

The FAA concurs. Paragraph (b)(3) of this supplemental NPRM [which was designated paragraph (b)(2) in the original NPRM] has been revised to indicate that these visual inspections are not required. However, the visual inspections that are part of the NDI procedures specified in Section 2 of Volume II of the SID are still required by this AD action. Additionally, paragraph (b)(4) from the originally proposed rule, which would have required general visual inspections, has been deleted from this supplemental NPRM since the requirement to perform visual inspections of FLOS PSE's are no longer necessary. Therefore, references to Section 4, ''Normal Maintenance Visual Inspections,'' of Volume II of the SID have been removed since those inspections are no longer required.

Since these changes significantly revise the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Although other comments were received in response to the original NPRM, those comments, as well as any others received in response to this supplemental NPRM, will be addressed in the final rule.

Cost Impact

There are approximately 419 Model DC–10 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 249 airplanes of U.S. registry and 13 U.S. operators would be affected by this proposed AD.

Incorporation of the SID program into an operator's maintenance program, as required by AD 93–17–09 is estimated to necessitate 1,270 work hours (per operator), at an average labor rate of $60 per work hour. Based on these figures, the cost to the 13 affected U.S. operators to incorporate the SID program is estimated to be $990,600.

The incorporation of the revised procedures proposed in this AD action would require approximately 20 additional work hours per operator to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost to the 13 affected U.S. operators to incorporate these revised procedures into the SID program into an operator's maintenance program is estimated to be $15,600.

The recurring inspection costs, as required by AD 93–17–09, are estimated to be 365 work hours per airplane per year, at an average labor rate of $60 per work hour. Based on these figures, the recurring inspection costs required by AD 93–17–09 are estimated to be $21,900 per airplane, or $5,453,100 for the affected U.S. fleet.

Since no new recurring inspection procedures have been added to the program by this proposed AD action, there would be no additional economic burden on affected operators to perform additional recurrent inspections.

Based on the above figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,468,700

for the first year, and $5,453,100 for each year thereafter. These ''total cost impact'' figures assume that no operator has yet accomplished any of the requirements of this AD. However, it can be reasonably assumed that a majority of the affected operators have already initiated the SID program (as required by AD 93–17–09).

Additionally, the number of required work hours for each proposed inspection (and the SID program), as indicated above, is presented as if the accomplishment of those actions were to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Further, any cost associated with special airplane scheduling can be expected to be minimal.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8680 (58 FR 54949, October 25, 1993), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 94–NM–244–AD. Supersedes AD 93–17–09, Amendment 39–8680.

Applicability: Model DC–10 series airplanes and KC–10A (military) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within 6 months after November 24, 1993 (the effective date of AD 93–17–09, amendment 39–8680), incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection(s) of the Principal Structural Elements (PSE's) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Revision 3, dated December 1992, in accordance with Section 2 of Volume III–92, dated October 1992, of the SID. The non-destructive inspection (NDI) techniques set forth in Section 2 and Section 4 of Volume II, Revision 3, dated December 1992, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions contained in Section 2 of Volume III–92, dated October 1992, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For those Fleet Leader Operator Sampling (FLOS) PSE's that do not have a Normal Maintenance Visual Inspection specified in Section 4 of Volume II, Revision 3, dated December 1992, of the SID, the procedure for general visual inspection is as follows: Perform an inspection of the general PSE area for cleanliness, presence of foreign objects, security of parts, cracks, corrosion, and damage.

(2) For PSE's 53.10.031E/.032E, 53.10.047E/.048E, and 57.10.029E/.030E: The ENDDATE for these PSE's is October 1993. (For these PSE's disregard the June 1993 ENDDATE specified in Section 2 of Volume III–92, dated October 1992, of the SID.)

(b) Within 6 months after the effective date of this AD, replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD with a revision that provides for inspection(s) of the PSE's defined in Section 2 of Volume I of McDonnell Douglas Report No. L26–012, ''DC–10 Supplemental Inspection Document (SID),'' Revision 5, dated October 1994, in accordance with Section 2 of Volume III–94, dated November 1994, of the SID. The NDI techniques set forth in Section 2 of Volume II, Revision 5, dated October 1994, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph.

(1) Prior to reaching the threshold (N_{th}), but no earlier than one-half of the threshold (N_{th}/2), specified for all PSE's listed in Volume III–94, dated November 1994, of the SID, inspect each PSE sample in accordance with the NDI procedures set forth in Section 2 of Volume II, Revision 5, dated October 1994. Thereafter, repeat the inspection for that PSE at intervals not to exceed DNDI/2 of the NDI procedure that is specified in Volume III–94, dated November 1994, of the SID.

(2) This AD does not require visual inspections of FLOS PSE's on airplanes listed in Volume III–94, dated November 1994, of the SID planning data at least once during the specified inspection interval, in accordance with Section 2 of Volume III–94, dated November 1994, of the SID.

(3) For PSE's 53.10.055/.056E, 55.10.013/.014B, 53.10.005/.006E, 53.10.031/.032E, 53.10.047/.048E, 57.10.029/.030E: The EDATE for these PSE's is June 1998. (For these PSE's, disregard the June 1996 EDATE specified in Section 2, of Volume III–94, dated November 1994, of the SID.)

(4) All inspection results (negative or positive) must be reported to McDonnell Douglas in accordance with the instructions contained in Section 2 of Volume III–94, dated November 1994, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) Any cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 1: Requests for approval of any PSE repair that would affect the FAA-approved maintenance inspection program required by this AD should include a damage tolerance assessment for that PSE repair.

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

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

Note 3: Alternative methods of compliance previously granted for AD 93–17–09, amendment 39–8680, continue to be considered as acceptable alternative methods of compliance with this amendment.

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

Issued in Renton, Washington, on August 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22209 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AAL–2]

Proposed Amendment of G–8 and V–328; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the designations of Colored Federal Airway G–8 and Alaskan Federal Airway V–328. The FAA is proposing to realign Colored Federal Airway G–8 to avoid certain restricted areas. Alaskan Federal Airway V–328 would be realigned from Dillingham, AK, and Kipnuk, AK, resulting in a lower minimum en route altitude (MEA) of 9,000 feet. This action would enhance the flow of air traffic.

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

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 95–AAL–2, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AAL–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the designations of Colored Federal Airway G–8 and Alaskan Federal Airway V–328. This action would realign Colored Federal Airway G–8 to avoid restricted areas R–2203A, R–2203B, and R–2203C. Realigning V–328, as a direct route between Dillingham, AK, and Kipnuk, AK, would result in a lower MEA of 9,000 feet. This proposal would enhance the flow of air traffic. Green Colored Federal airways are published in paragraph 6009(a) and Alaskan Federal airways are published in paragraph 6010(b) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway and the Alaskan Federal airway listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6009(a)—Green Federal Airways

* * * * *

G–8 [Revised]

From Shemya, AK, NDB, 20 AGL Adak, AK, NDB; 20 AGL Dutch Harbor, AK, NDB; 20 AGL INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings; 20 AGL Elfee NDB; 20 AGL Saldo, AK, NDB; INT Saldo NDB 054° and Kachemak, AK, NDB 269° bearings, to Kachemak NDB. From Campbell Lake, AK, NDB; INT Campbell Lake NDB 032°T(006°M) and Glenallen, AK, NDB 253°T(227°M) bearings; Glenallen NDB; INT Glenallen NDB 052° and Nabesna, AK, NDB 252° bearings; Nabesna NDB.

* * * * *

Paragraph 6010(b)—Alaskan VOR Federal Airways

* * * * *

V–328 [Revised]

From Dillingham, AK; to Kipnuk, AK.

* * * * *

Issued in Washington, DC, on August 25, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–22200 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0075–92]

RIN 1545–AR31

Definition of Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed Income Tax Regulations relating to the definitions of subpart F income and foreign personal holding company income of a controlled foreign corporation and the allocation of deficits for purposes of computing the deemed-paid foreign tax credit. These proposed regulations are necessary to provide guidance that coordinates with guidance provided in final regulations under section 954, published elsewhere in this issue of the **Federal Register**. These regulations will affect United States shareholders of controlled foreign corporations. This document also contains a notice of hearing on these regulations.

DATES: Written comments must be received by December 6, 1995. Outlines of topics to be discussed at the public hearing scheduled for January 4, 1996 at 10 a.m. must be received by December 14, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (INTL–0075–92), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (INTL–0075–92), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Valerie Mark, (202) 622–3840; concerning submissions and the hearing, Michael Slaughter (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This notice of proposed rulemaking does not contain collections of information and, therefore, it has not been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Background

This document contains proposed regulations amending the Income Tax Regulations (26 CFR Part 1) under sections 952, 954(c) and 960 of the Internal Revenue Code. These regulations are also issued under authority contained in section 7805 of the Internal Revenue Code. In final regulations under section 954, published elsewhere in this issue of the **Federal Register**, the section relating to the treatment of tax-exempt interest under the foreign personal holding company income rules was reserved. These proposed regulations would provide rules for the treatment of tax-exempt interest and would also provide guidance under sections 952 and 960 to coordinate with the final regulations.

Explanation of Provisions

Sections 1.952–1 (e) and (f) and 1.960–1(i)

Section 1.954–1(c)(1)(ii), published elsewhere in this issue of the **Federal Register**, provides generally that if the amount in any category of foreign base company income or foreign personal holding company income is less than zero, the loss may not reduce any other category of foreign base company income or foreign personal holding company income except by operation of the earnings and profits limitation of section 952(c)(1). The earnings and profits limitation will apply when subpart F income exceeds current earnings and profits. This notice of proposed rulemaking provides rules under section 952(c)(1)(A) to determine how the excess of subpart F income over current earnings and profits will reduce categories of foreign base company income or foreign personal holding company income.

These rules apply both to determine the amount that is included in the U.S. shareholder's gross income in each category of subpart F income under section 951(a)(1)(A) from each section 904(d) separate category, and to determine the subpart F category and the section 904(d) separate category from which an amount will be recharacterized as subpart F income under section 952(c)(2). Separate rules are provided in this notice of proposed rulemaking to compute post-1986 undistributed earnings under section 960.

Section 1.952–1(e) provides that for post-1986 years, when the subpart F income of a controlled foreign corporation exceeds its current earnings and profits, this excess, first, proportionately reduces subpart F income in each separate category in which current earnings and profits are zero or less than zero, second, proportionately reduces subpart F income in each separate category in which subpart F income exceeds current earnings and profits, and third, proportionately reduces subpart F income in other separate categories. If a single separate category contains more than one category of subpart F income, the categories of subpart F income in the separate category will be proportionately reduced.

Section 1.952–1(f) provides that the amount and category of subpart F income in each separate category that is reduced by operation of the earnings and profits limitation, as determined under paragraph (e), constitutes a recapture account. In any year in which earnings and profits exceed subpart F income, the recapture accounts in each separate category of the corporation will be recharacterized, on a proportionate basis, as subpart F income to the extent of this excess. An amount that is recharacterized as subpart F income is treated as income in the same separate category as the recapture account from which it was derived.

Under paragraph (f), a recapture account is reduced either when amounts in the account are recharacterized as subpart F income or when the corporation makes an actual distribution from the separate category containing the recapture account. A distribution out of section 959(c)(3) earnings and profits is treated as made first on a proportionate basis out of the recapture accounts in each separate category. If a distribution from earnings and profits described in section 959(c)(3) occurs in the same year that an amount is recharacterized, the recharacterization rules will apply first. Examples are provided to illustrate the rules of paragraphs (e) and (f).

Regulations are proposed under section 960 that apply the principles of section 902 to determine the portion of the controlled foreign corporation's post-1986 foreign income taxes deemed to be paid by a United States corporate shareholder in connection with a subpart F inclusion. If the corporate shareholder computes an amount under both sections 902 and 960 for a taxable year, section 960 is applied first.

These proposed regulations also provide rules to determine how deficits in post-1986 undistributed earnings are allocated for purposes of sections 902 and 960. In accordance with the approach of Notice 88–70 (1988–2 C.B 369), § 1.960–1(i)(4) provides that a post-1986 accumulated deficit in a separate category is allocated pro rata against post-1986 undistributed earnings in other separate categories to compute post-1986 undistributed earnings. The deficit does not permanently reduce earnings in these other separate categories. Rather, after deemed-paid taxes are computed, it is carried forward in the same separate category in which it was incurred. Paragraph (i)(3) clarifies that the numerator of the deemed-paid credit fraction cannot exceed the denominator because deemed-paid taxes may not exceed taxes paid or accrued by the controlled foreign corporation. Examples are provided to illustrate these rules.

The proposed regulations attempt to coordinate, to the extent possible, the allocation of deficits for purposes of determining the amounts of subpart F inclusions and deemed-paid taxes out of the controlled foreign corporation's separate foreign tax credit limitation categories under sections 952, 954, and 960. Complete coordination is not possible in all cases, because subpart F income and the earnings and profits limitation of section 952(c)(1)(A) are determined on the basis of earnings and profits of only the current year, whereas deemed-paid taxes are calculated under section 960 on the basis of multi-year pools of earnings and profits and taxes. In addition, potential differences in the calculation of income and earnings and profits, cf. section 952(c)(3), complicate the coordination.

The proposed rules attempt to minimize the incidence of subpart F inclusions out of separate categories with no current earnings which, in the absence of sufficient accumulated earnings, may carry no deemed-paid taxes. Comments are requested as to whether the proposed allocation methods or some alternative approach would best achieve appropriate foreign tax credit results.

Section 1.954–2(b)(3)

Under § 1.954–2T(b)(6), interest income that is exempt from tax under section 103 is included in the foreign personal holding company income of the controlled foreign corporation. However, the net foreign base company income that is attributable to tax-exempt interest is treated as tax-exempt interest in the hands of the United States shareholder upon a deemed distribution under subpart F. Therefore, for regular tax purposes, the tax-exempt interest is not currently included in the gross income of the United States shareholder under subpart F. However, the deemed distribution of tax-exempt interest may subject the United States shareholder to the alternative minimum tax.

Section 1.954–2(b)(3) of the proposed regulations would amend the rule in the temporary regulations to provide that foreign personal holding company income includes interest income that is exempt from tax under section 103. The tax-exempt interest would not retain its character as such in the hands of the United States shareholder upon a deemed distribution under subpart F. This proposed rule closely parallels the domestic rule for tax-exempt interest. The controlled foreign corporation realizes the tax benefit associated with the receipt of interest income described in section 103 because no United States withholding tax is collected on the income when it is paid to the controlled foreign corporation. As in the domestic context, however, this tax benefit is limited to the corporate level and is not retained when the tax-exempt interest is distributed to the United States shareholders or included in their gross income under subpart F. This rule simplifies the interaction of the tax-exempt interest and alternative minimum tax provisions, and avoids the double-taxation and administrative problems associated with the current rule.

These regulations are proposed to be effective for taxable years of the foreign corporation beginning after 60 days after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 4, 1996, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit written comments by December 6, 1995 and submit an outline of topics to be discussed and time to be devoted to each topic (signed original and eight (8) copies) by December 14, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information. The principal authors of these regulations are Barbara Felker and Valerie Mark of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for Part 1 is amended by adding the following citation in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.960–1 also issued under 26 U.S.C. 960(a). * * *

Par. 2. Section 1.952–1 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1.952–1 Subpart F income defined.

* * * * *

(e) *Application of current earnings and profits limitation*—(1) *In general.* If the subpart F income (as defined in section 952(a)) of a controlled foreign corporation exceeds the foreign corporation's earnings and profits for the taxable year, the subpart F income includible in the income of the corporation's United States shareholders is reduced under section 952(c)(1)(A) in accordance with the following rules. The excess of subpart F income over current year earnings and profits shall—

(i) First, proportionately reduce subpart F income in each separate category of the controlled foreign corporation, as defined in § 1.904–5(a)(1), in which current earnings and profits are zero or less than zero;

(ii) Second, proportionately reduce subpart F income in each separate category in which subpart F income exceeds current earnings and profits; and

(iii) Third, proportionately reduce subpart F income in other separate categories.

(2) *Allocation to a category of subpart F income.* An excess amount that is allocated under paragraph (e)(1) of this section to a separate category must be further allocated to a category of subpart F income if the separate category contains more than one category of subpart F income described in section 952(a) or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*). In such case, the excess amount that is allocated to the separate category must be allocated to the various categories of subpart F income within that separate category on a proportionate basis.

(3) *Recapture of subpart F income reduced by operation of earnings and profits limitation.* Any amount in a category of subpart F income described in section 952(a) or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*) that is reduced by operation of the current year earnings and profits limitation of section 952(c)(1)(A) and this paragraph (e) shall be subject to recapture in a subsequent year under the rules of section 952(c)(2) and paragraph (f) of this section.

(4) *Coordination with sections 953 and 954.* The rules of this paragraph (e) shall be applied after the application of sections 953 and 954 and the regulations under those sections, except as provided in § 1.954–1(d)(4)(ii).

(5) *Earnings and deficits retain separate limitation character.* The income reduction rules of paragraph (e)(1) of this section shall apply only for purposes of determining the amount of an inclusion under section 951(a)(1)(A) from each separate category as defined in § 1.904–5(a)(1) and the separate categories in which recapture accounts are established under section 952(c)(2) and paragraph (f) of this section. For rules applicable in computing post-1986 undistributed earnings, see generally section 902 and the regulations under that section. For rules relating to the allocation of deficits for purposes of computing foreign taxes deemed paid under section 960 with respect to an inclusion under section 951(a)(1)(A), see § 1.960–1(i).

(f) *Recapture of subpart F income in subsequent taxable year*—(1) *In general.* If a controlled foreign corporation's subpart F income for a taxable year is reduced under the current year earnings and profits limitation of section 952(c)(1)(A) and paragraph (e) of this section, recapture accounts will be established and subject to recharacterization in any subsequent taxable year to the extent the recapture accounts were not previously recharacterized or distributed, as provided in paragraphs (f) (2) and (3) of this section.

(2) *Rules of recapture*—(i) *Recapture account.* If a category of subpart F income described in section 952(a) or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*) is reduced under the current year earnings and profits limitation of section 952(c)(1)(A) and paragraph (e) of this section for a taxable year, the amount of such reduction shall constitute a recapture account.

(ii) *Recapture.* Each recapture account of the controlled foreign corporation will be recharacterized, on a proportionate basis, as subpart F income in the same separate category (as defined in § 1.904–5(a)(1)) as the recapture account to the extent that current year earnings and profits exceed subpart F income in a taxable year. The United States shareholder must include his pro rata share (determined under the rules of § 1.951–1(e)) of each recharacterized amount in income as subpart F income in such separate category for the taxable year.

(iii) *Reduction of recapture account and corresponding earnings.* Each recapture account, and post-1986 undistributed earnings in the separate category containing the recapture account, will be reduced in any taxable year by the amount which is recharacterized under paragraph (f)(2)(ii) of this section. In addition, each recapture account, and post-1986 undistributed earnings in the separate category containing the recapture account, will be reduced in the amount of any distribution out of that account (as determined under the ordering rules of section 959(c) and paragraph (f)(3)(ii) of this section).

(3) *Distribution ordering rules*—(i) *Coordination of recapture and distribution rules.* If a controlled foreign corporation distributes an amount out of earnings and profits described in section 959(c)(3) in a year in which current year earnings and profits exceed subpart F income and there is an amount in a recapture account for such year, the recapture rules will apply first.

(ii) *Distributions reduce recapture accounts first.* Any distribution made by a controlled foreign corporation out of earnings and profits described in section 959(c)(3) shall be treated as made first on a proportionate basis out of the recapture accounts in each separate category to the extent thereof (even if the amount in the recapture account exceeds post-1986 undistributed earnings in the separate category containing the recapture account). Any remaining distribution shall be treated as made on a proportionate basis out of the remaining earnings and profits of the controlled foreign corporation in each separate category. See section 904(d)(3)(D).

(4) *Examples.* The application of paragraphs (e) and (f) of this section may be illustrated by the following examples:

Example 1. (i) *A*, a U.S. person, is the sole shareholder of *CFC*, a controlled foreign corporation formed on January 1, 1996, whose functional currency is the *u*. In 1996, *CFC* earns 100u of foreign base company sales income that is general limitation income described in section 904(d)(1)(I) and incurs a (200u) loss attributable to activities that would have produced general limitation income that is not subpart F income. In 1996

CFC also earns 100u of foreign personal holding company income that is passive income described in section 904(d)(1)(A), and 100u of foreign personal holding company income that is dividend income subject to a separate limitation described in section 904(d)(1)(E) for dividends from a noncontrolled section 902 corporation. *CFC*'s subpart F income for 1996, 300u, exceeds *CFC*'s current earnings and profits, 100u, by 200u. Under section 952(c)(1)(A) and paragraph (e) of this section, subpart F income is limited to *CFC*'s current earnings and profits of 100u, all of which is included in *A*'s gross income under section 951(a)(1)(A). The 200u of *CFC*'s 1996 subpart F income that is not included in *A*'s income in 1996 by reason of section 952(c)(1)(A) is subject to recapture under section 952(c)(2) and paragraph (f) of this section.

(ii) For purposes of determining the amount and type of income included in *A*'s gross income and the amount and type of income in *CFC*'s recapture account, the rules of paragraphs (e)(1) and (2) of this section apply. Under paragraph (e)(1)(i), the amount by which *CFC*'s subpart F income exceeds its earnings and profits for 1996, 200u, first reduces from 100u to 0 *CFC*'s subpart F income in the general limitation category, which has a current year deficit of (100u) in earnings and profits. Next, under paragraph (e)(1)(iii) of this section, the remaining 100u by which *CFC*'s 1996 subpart F income exceeds earnings and profits is applied proportionately to reduce *CFC*'s subpart F income in the separate categories for passive income (100u) and dividends from the noncontrolled section 902 corporation (100u). Thus, A includes 50u of passive limitation/foreign personal holding company income and 50u of dividends from the noncontrolled section 902 corporation/ foreign personal holding company income in gross income in 1996. *CFC* has 100u in its general limitation/foreign base company sales income recapture account attributable to the 100u of foreign base company sales income that is not included in *A*'s income by reason of the earnings and profits limitation of section 952(c)(1)(A). *CFC* also has 50u in its passive limitation recapture account, all of which is attributable to foreign personal holding company income, and 50u in its recapture account for dividends from the noncontrolled section 902 corporation, all of which is attributable to foreign personal holding company income.

(iii) For purposes of computing post-1986 undistributed earnings, the rules of sections 902 and 960, including the rules of § 1.960–1(i), apply. Under § 1.960–1(i), the general limitation deficit of (100u) is allocated proportionately to reduce passive limitation earnings of 100u and noncontrolled section 902 dividend earnings of 100u. Thus, passive limitation earnings are reduced by 50u to 50u (100u passive limitation earnings/200u total earnings in positive separate categories ×(100u) general limitation deficit =50u reduction), and the noncontrolled section 902 corporation earnings are reduced by 50u to 50u (100u noncontrolled section 902 corporation earnings/200u total earnings in positive separate categories ×(100u) general limitation deficit=50u reduction). All of *CFC*'s post-1986 foreign income taxes with respect to passive limitation income and dividends from the noncontrolled section 902 corporation are deemed paid by A under section 960 with respect to the subpart F inclusions (50u inclusion/50u earnings in each separate category). After the inclusion and deemed-paid taxes are computed, at the close of 1996 *CFC* has a (100u) deficit in general limitation earnings (100u subpart F earnings + (200u) nonsubpart F loss), 50u of passive limitation earnings (100u of earnings attributable to foreign personal holding company income −50u inclusion) with a corresponding passive limitation/foreign personal holding company income recapture account of 50u, and 50u of earnings subject to a separate limitation for dividends from the noncontrolled section 902 corporation (100u earnings −50u inclusion) with a corresponding noncontrolled section 902 corporation/foreign personal holding company income recapture account of 50u.

Example 2. (i) The facts are the same as in *Example 1* with the addition of the following facts. In 1997, *CFC* earns 100u of foreign base company sales income that is general limitation income and 100u of foreign personal holding company income that is passive limitation income. In addition, *CFC* incurs (10u) of expenses that are allocable to its separate limitation for dividends from the noncontrolled section 902 corporation. Thus, *CFC*'s subpart F income for 1997, 200u, exceeds *CFC*'s current earnings and profits, 190u, by 10u. Under section 952(c)(1)(A) and paragraph (e) of this section, subpart F income is limited to *CFC*'s current earnings and profits of 190u, all of which is included in *A*'s gross income under section 951(a)(1)(A).

(ii) For purposes of determining the amount and type of income included in *A*'s gross income and the amount and type of income in *CFC*'s recapture accounts, the rules of paragraphs (e) (1) and (2) of this section apply. While *CFC*'s general limitation post-1986 undistributed earnings for 1997 are 0 ((100u) opening balance + 100u subpart F income), *CFC*'s general limitation subpart F income (100u) does not exceed its general limitation current earnings and profits (100u) for 1997. Accordingly, under paragraph (e)(1)(iii) of this section, the amount by which *CFC*'s subpart F income exceeds its earnings and profits for 1997, 10u, is applied proportionately to reduce *CFC*'s subpart F income in the separate categories for general limitation income, 100u, and passive income, 100u. Thus, *A* includes 95u of general limitation foreign base company sales income and 95u of passive limitation foreign personal holding company income in gross income in 1997. At the close of 1997 *CFC* has 105u in its general limitation/foreign base company sales income recapture account (100u from 1996 + 5u from 1997), 55u in its passive limitation/foreign personal holding company income recapture account (50u from 1996 + 5u from 1997), and 50u in its dividends from the noncontrolled section 902 corporation/foreign personal holding company income recapture account (all from 1996).

(iii) For purposes of computing post-1986 undistributed earnings in each separate category, the rules of sections 902 and 960, including the rules of § 1.960–1(i), apply. Thus, post-1986 undistributed earnings (or an accumulated deficit) in each separate category are increased (or reduced) by current earnings and profits or current deficits in each separate category. The accumulated deficit in *CFC*'s general limitation earnings and profits (100u) is reduced to 0 by the addition of 100u of 1997 earnings and profits. *CFC*'s passive limitation earnings of 50u are increased by 100u to 150u, and *CFC*'s noncontrolled section 902 corporation earnings of 50u are decreased by (10u) to 40u. After the addition of current year earnings and profits and deficits to the separate categories there are no deficits remaining in any separate category. Thus, the allocation rules of § 1.960–1(i)(4) do not apply in 1997. Accordingly, in determining the post-1986 foreign income taxes deemed paid by *A*, post-1986 undistributed earnings in each separate category are unaffected by earnings in the other categories. Foreign taxes deemed paid under section 960 for 1997 would be determined as follows for each separate category: with respect to the inclusion of 95u of foreign base company sales income out of general limitation earnings, the section 960 fraction is 95u inclusion/0 total earnings; with respect to the inclusion of 95u of passive limitation income the section 960 fraction is 95u inclusion/ 150u passive earnings. Thus, no general limitation taxes would be associated with the inclusion of the general limitation earnings because there are no accumulated earnings in the general limitation category. After the deemed-paid taxes are computed, at the close of 1997 *CFC* has a (95u) deficit in general limitation earnings and profits ((100u) opening balance + 100u current earnings—95u inclusion), 55u of passive limitation earnings and profits (50u opening balance + 100u current foreign personal holding company income—95u inclusion), and 40u of earnings and profits subject to the separate limitation for dividends from the noncontrolled section 902 corporation (50u opening balance + (10u) expense).

Example 3. (i) *A*, a U.S. person, is the sole shareholder of *CFC*, a controlled foreign corporation whose functional currency is the *u*. At the beginning of 1996, *CFC* has post-1986 undistributed earnings of 275u, all of which are general limitation earnings described in section 904(d)(1)(I). *CFC* has no previously-taxed earnings and profits described in section 959 (c)(1) or (c)(2). In 1996, *CFC* has a (200u) loss in the shipping category described in section 904(d)(1)(D), 100u of foreign personal holding company income that is passive income described in section 904(d)(1)(A), and 125u of general limitation manufacturing earnings that are not subpart F income. *CFC*'s subpart F income for 1996, 100u, exceeds *CFC*'s current earnings and profits, 25u, by 75u. Under section 952(c)(1)(A) and paragraph (e) of this section, subpart F income is limited to *CFC*'s current earnings and profits of 25u, all of which is included in *A*'s gross income under section 951(a)(1)(A). The 75u of *CFC*'s 1996 subpart F income that is not included in *A*'s income in 1996 by reason of section 952(c)(1)(A) is subject to recapture under

section 952(c)(2) and paragraph (f) of this section.

(ii) For purposes of determining the amount and type of income included in *A*'s gross income and the amount and type of income in *CFC*'s recapture account, the rules of paragraphs (e) (1) and (2) of this section apply. Under paragraph (e)(1) of this section, the amount of *CFC*'s subpart F income in excess of earnings and profits for 1996, 75u, reduces the 100u of passive limitation foreign personal holding company income. Thus, *A* includes 25u of passive limitation foreign personal holding company income in gross income, and *CFC* has 75u in its passive limitation/foreign personal holding company income recapture account.

(iii) For purposes of computing post-1986 undistributed earnings in each separate category the rules of sections 902 and 960, including the rules of § 1.960–1(i), apply. Under § 1.960–1(i), the shipping limitation deficit of (200u) is allocated proportionately to reduce general limitation earnings of 400u and passive limitation earnings of 100u. Thus, general limitation earnings are reduced by 160u to 240u (400u general limitation earnings/500u total earnings in positive separate categories × (200u) shipping deficit = 160u reduction), and passive limitation earnings are reduced by 40u to 60u (100u passive earnings/500u total earnings in positive separate categories × (200u) shipping deficit = 40u reduction). Five-twelfths of *CFC*'s post-1986 foreign income taxes with respect to passive limitation earnings are deemed paid by *A* under section 960 with respect to the subpart F inclusion (25u inclusion/60u passive earnings). After the inclusion and deemed-paid taxes are computed, at the close of 1996 *CFC* has 400u of general limitation earnings (275u opening balance + 125u current earnings), 75u of passive limitation earnings (100u of foreign personal holding company income − 25u inclusion), and a (200u) deficit in shipping limitation earnings.

Example 4. (i) The facts are the same as in *Example 3* with the addition of the following facts. In 1997, *CFC* earns 50u of general limitation earnings that are not subpart F income and 75u of passive limitation income that is foreign personal holding company income. Thus, *CFC* has 125u of current earnings and profits. *CFC* distributes 200u to *A*. Under paragraph (f)(3)(ii) of this section, the recapture rules are applied first. Thus, the amount by which 1997 current earnings and profits exceed subpart F income, 50u, is recharacterized as passive limitation foreign personal holding company income. *CFC*'s total subpart F income for 1997 is 125u of passive limitation foreign personal holding company income (75u current earnings plus 50u recapture account), and the passive limitation/foreign personal holding company income recapture account is reduced from 75u to 25u.

(ii) *CFC* has 150u of previously-taxed earnings and profits described in section 959(c)(2) (25u attributable to 1996 and 125u attributable to 1997), all of which is passive limitation earnings and profits. Under section 959(c), 150u of the 200u distribution is deemed to be made from earnings and profits described in section 959(c)(2). The remaining 50u is deemed to be made from earnings and profits described in section 959(c)(3). Under paragraph (f)(3)(i) of this section, the dividend distribution is deemed to be made first out of the passive limitation recapture account to the extent thereof (25u). Under paragraph (f)(2)(iii) of this section, the passive limitation recapture account is reduced from 25u to 0. The remaining distribution of 25u is treated as made out of *CFC*'s general limitation earnings and profits.

(iii) For purposes of computing post-1986 undistributed earnings, the rules of section 902 and 960, including the rules of § 1.960–1(i), apply. Thus, the shipping limitation accumulated deficit of (200u) reduces general limitation earnings and profits of 450u and passive limitation earnings and profits of 150u on a proportionate basis. Thus, 100% of *CFC*'s post-1986 foreign income taxes with respect to passive limitation earnings are deemed paid by *A* under section 960 with respect to the 1997 subpart F inclusion of 125u (100u inclusion (numerator limited to denominator)/100u passive earnings). No post-1986 foreign income taxes remain to be deemed paid under section 902 in connection with the 25u distribution from the passive limitation/foreign personal holding company income recapture account. One-twelfth of *CFC*'s post-1986 foreign income taxes with respect to general limitation earnings are deemed paid by *A* under section 902 with respect to the distribution of 25u general limitation earnings and profits described in section 959(c)(3) (25u inclusion/300u general limitation earnings). After the deemed-paid taxes are computed, at the close of 1997 *CFC* has 425u of general limitation earnings and profits (400u opening balance + 50u current earnings − 25u distribution), 0 of passive limitation earnings (75u recapture account +75u current foreign personal holding company income − 125u inclusion − 25u distribution), and a (200u) deficit in shipping limitation earnings.

Par. 3. In § 1.952–2, paragraph (c)(1) is revised to read as follows:

§ 1.952–2 Determination of gross income and taxable income of a foreign corporation.

* * * * *

(c) *Special rules for purposes of this section*—(1) *Nonapplication of certain provisions.* Except where otherwise distinctly expressed, the provisions of section 103 and subchapters F, G, H, L, M, N, S, and T of chapter 1 of the Internal Revenue Code shall not apply.

* * * * *

Par. 4. In § 1.954–2, the text of paragraph (b)(3) is added to read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(b) * * *

(3) *Treatment of tax exempt interest.* Foreign personal holding company income includes all interest income, including interest that is described in section 103 (see § 1.952–2(c)(1)).

* * * * *

Par. 5. In § 1.960–1, paragraph (i) is added to read as follows:

§ 1.960–1 Foreign tax credit with respect to taxes paid on earnings and profits of controlled foreign corporations.

* * * * *

(i) *Computation of deemed-paid taxes in post-1986 taxable years*—(1) *General rule.* If a domestic corporation is eligible to compute deemed-paid taxes under section 960(a)(1) with respect to an amount included in gross income under section 951(a), then, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 and the regulations under that section in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)).

(2) *Ordering rule for computing deemed-paid taxes under sections 902 and 960.* If a domestic corporation computes deemed-paid taxes under both section 902 and section 960 in the same taxable year, section 960 shall be applied first. After the deemed-paid taxes are computed under section 960 with respect to a deemed income inclusion, post-1986 undistributed earnings and post-1986 foreign income taxes in each separate category shall be reduced by the appropriate amounts before deemed-paid taxes are computed under section 902 with respect to a dividend distribution.

(3) *Computation of post-1986 undistributed earnings.* Post-1986 undistributed earnings (or an accumulated deficit in post-1986 undistributed earnings) are computed under section 902 and the regulations under that section.

(4) *Allocation of accumulated deficits.* For purposes of computing post-1986 undistributed earnings under sections 902 and 960, a post-1986 accumulated deficit in a separate category shall be allocated proportionately to reduce post-1986 undistributed earnings in the other separate categories. However, a deficit in any separate category shall not permanently reduce earnings in other separate categories, but after the deemed-paid taxes are computed the separate limitation deficit shall be carried forward in the same separate category in which it was incurred. In addition, because deemed-paid taxes may not exceed taxes paid or accrued by the controlled foreign corporation, in computing deemed-paid taxes with

respect to an inclusion out of a separate category that exceeds post-1986 undistributed earnings in that separate category, the numerator of the deemed-paid credit fraction (deemed inclusion from the separate category) may not exceed the denominator (post-1986 undistributed earnings in the separate category).

(5) *Examples.* The application of this paragraph (i) may be illustrated by the following examples. See § 1.952–1(f)(4) for additional illustrations of these rules.

Example 1. (i) *A*, a U.S. person, is the sole shareholder of *CFC*, a controlled foreign corporation formed on January 1, 1996, whose functional currency is the *u*. In 1996 *CFC* earns 100u of general limitation income described in section 904(d)(1)(I) that is not subpart F income and 100u of foreign personal holding company income that is passive income described in section 904(d)(1)(A). In 1996 *CFC* also incurs a (50u) loss in the shipping category described in section 904(d)(1)(D). *CFC*'s subpart F income for 1996, 100u, does not exceed *CFC*'s current earnings and profits of 150u. Accordingly, all 100u of *CFC*'s subpart F income is included in A's gross income under section 951(a)(1)(A). Under section 904(d)(3)(B) of the Code and paragraph (i)(1) of this section, *A* includes 100u of passive limitation income in gross income for 1996.

(ii) For purposes of computing post-1986 undistributed earnings under sections 902, 904(d) and 960 with respect to the subpart F inclusion, the shipping limitation deficit of (50u) is allocated proportionately to reduce general limitation earnings of 100u and passive limitation earnings of 100u. Thus, general limitation earnings are reduced by 25u to 75u (100u general limitation earnings/200u total earnings in positive separate categories × (50u) shipping deficit = 25u reduction), and passive limitation earnings are reduced by 25u to 75u (100u passive earnings/200u total earnings in positive separate categories × (50u) shipping deficit = 25u reduction). All of *CFC*'s post-1986 foreign income taxes with respect to passive limitation earnings are deemed paid by *A* under section 960 with respect to the 100u subpart F inclusion of passive income (75u inclusion (numerator limited to denominator under paragraph (i)(4) of this section)/75u passive earnings). After the inclusion and deemed-paid taxes are computed, at the close of 1996 *CFC* has 100u of general limitation earnings, 0 of passive limitation earnings (100u of foreign personal holding company income—100u inclusion), and a (50u) deficit in shipping limitation earnings.

Example 2. (i) The facts are the same as in *Example 1* with the addition of the following facts. In 1997, *CFC* distributes 150u to *A*. *CFC* has 100u of previously-taxed earnings and profits described in section 959(c)(2) attributable to 1996, all of which is passive limitation earnings and profits. Under section 959(c), 100u of the 150u distribution is deemed to be made from earnings and profits described in section 959(c)(2). The remaining 50u is deemed to be made from earnings and profits described in section 959(c)(3). The entire dividend distribution of 50u is treated as made out of *CFC*'s general limitation earnings and profits. See section 904(d)(3)(D).

(ii) For purposes of computing post-1986 undistributed earnings under section 902 with respect to the 1997 dividend of 50u, the shipping limitation accumulated deficit of (50u) reduces general limitation earnings and profits of 100u to 50u. Thus, 100% of *CFC*'s post-1986 foreign income taxes with respect to general limitation earnings are deemed paid by *A* under section 902 with respect to the 1997 dividend of 50u (50u dividend/50u general limitation earnings). After the deemed-paid taxes are computed, at the close of 1997 *CFC* has 50u of general limitation earnings (100u opening balance − 50u distribution), 0 of passive limitation earnings, and a (50u) deficit in shipping limitation earnings.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

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DEPARTMENT OF LABOR

Office of the Secretary

Wage and Hour Division

29 CFR Parts 4 and 5

41 CFR Parts 50–201 and 50–206

RIN 1215–AA96

Amendments to Federal Contract Labor Laws by the Federal Acquisition Streamlining Act of 1994

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: The Federal Acquisition Streamlining Act of 1994 amends the Contract Work Hours and Safety Standards Act (CWHSSA) and the Walsh-Healey Public Contracts Act (PCA). This document proposes to conform applicable regulations to the statutory amendments that raise the coverage threshold of CWHSSA and, among other things, eliminate the eligibility requirements of the PCA.

DATES: Comments are due on or before October 10, 1995.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile (''FAX'') machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Acting Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

II. Background

The Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355, 108 Stat. 3243) was enacted into law on October 13, 1994. Section 4104(c) of this Act amends sections 103 and 107 of the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. 327 *et seq*., to establish a threshold of $100,000 or more for contracts subject to CWHSSA's overtime provisions. Prior to this amendment, Federal and Federally assisted construction contracts of $2,000 or less, and purchases and contracts other than construction contracts of $2,500 or less, were exempt from CWHSSA's weekly overtime and related provisions pursuant to the variation in §§ 5.15(b) (1) and (2) of 29 CFR part 5. The new statutory threshold of $100,000 requires conforming revisions to §§ 5.5(b) and 5.15(b) (1) and (2) of 29 CFR part 5 and § 4.181(b) of 29 CFR part 4.

Contracting agencies and contractors should be aware that contractors awarded contracts in amounts less than $100,000 may continue to have obligations to pay certain of their employees weekly overtime, at one and one-half the regular rate for hours worked in excess of forty (40) per week, pursuant to section 7 of the Fair Labor Standards Act, 29 U.S.C. 207.

With respect to amendments affecting the Walsh-Healey Public Contracts Act (PCA), sections 3023 and 7201 of FASA (1) repeal 10 U.S.C. sec. 7299 to eliminate the applicability of the PCA to contracts for the construction, alternation, furnishing, or equipping of naval vessels; (2) repeal section 1(a) of

the PCA to eliminate the requirement that covered contractors must be either a ''regular dealer'' or ''manufacturer'' and renumbers subsections (b), (c), (d) and (e) to (a), (b), (c) and (d) respectively; (3) amend section 10 (b) of the PCA to substitute the term ''supplier of'' for the terms ''regular dealer'' and ''manufacturer;'' (4) amend section 10(c) of the PCA to strike the terms ''regular dealer'' and ''manufacturer;'' and (5) adds subsections (a) and (b) to section 11 of the PCA to retain the Secretary's authority to define the terms ''regular dealer'' and ''manufacturer.''

This rule proposes to amend applicable PCA regulations to delete a ''regular dealer'' or ''manufacturer'' eligibility requirement for bidders on contracts subject to the Act. Under the Act as amended, an eligible bidder includes, in addition to a manufacturer or regular dealer, any supplier or distributor of the materials, supplies, articles, or equipment to be manufactured or supplied under the contract. Specifically, § 50–201.1 of 41 CFR part 50–201 relating to contract stipulations is proposed to be renumbered as § 50–201.3, the paragraph currently designated as § 50–201.1(a) is proposed to be deleted to remove the ''manufacturer of or regular dealer in'' requirement, and the subsequent paragraphs of this section are proposed to be renumbered. In addition, § 50–201.101 relating to definitions of the terms ''manufacturer'' and ''regular dealer'' is proposed to be deleted in its entirety, as is § 50–201.604 relating to partial administrative exemptions from the manufacturer or regular dealer requirement. Also, the entire Part 50–206, which relates primarily to the qualifications of contractors and interpretations of the terms ''manufacturer'' and ''regular dealer,'' is proposed to be deleted except that §§ 50–206.1 and .2 are proposed to be incorporated into the general regulations at part 50–201 as new §§ 50–201.1 and .2, respectively.

With respect to the amendment concerning contracts for the construction, alteration, furnishing, or equipping of naval vessels, the repeal of 10 U.S.C. sec. 7299 to eliminate PCA coverage of such contracts requires no changes in the regulations. Contracting agencies and contractors should be aware that such contracts may now be subject to the Davis-Bacon Act, which applies to contracts in excess of $2,000 for the construction, alteration, and/or repair, including painting and decorating, of a public building or a public work. Marine vessels have historically been regarded as ''public works'' for purposes of the Davis-Bacon Act.

While section 7201(a) of FASA repealed the bidder eligibility requirements of PCA, section 7201(b) added a new provision which provided that the Secretary of Labor ''* * * *may* (emphasis added) prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by * * * (the United States).'' The new section also provides for judicial review of any legal question regarding the interpretation of manufacturer or regular dealer as promulgated under this new section. According to the legislative history of FASA's section 7201(b), authorizing the Secretary of Labor to define the terms ''regular dealer'' and ''manufacturer'' was considered appropriate because the terms have been incorporated by reference into a number of other statutes. (See H.R. Conf. Rep. No. 712, 103d Cong., 2d Sess. 225 (1994).)

In a review of other statutes, however, the Department only found one statute which explicitly incorporates PCA's definition of the term ''manufacturer'' and/or ''regular dealer'' by reference. This statute, 15 U.S.C. 637, concerns contracting authority of the Small Business Administration and the awarding of subcontracts to small businesses owned and controlled by socially and economically disadvantaged individuals. It provides at 15 U.S.C. 637(a)(17) that a responsible business concern may be the actual manufacturer or processor of the product to be supplied under a contract or ''* * * be a regular dealer, as defined pursuant to section 35(a) of Title 41 (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government * * *.'' (See 15 U.S.C. 637(a)(17)(B)(iii).) The effect of the proposed deletion of the regulatory definitions on this program is unclear.

A review of the Code of Federal Regulations (CFR) disclosed numerous regulations with references to the ''manufacturer'' or ''regular dealer'' provisions of the PCA which, in large part, have the purpose of implementing these requirements through the procurement process. The Department, nevertheless, is concerned that there may be other regulations or programs that may require eligible bidders or contractors to be either manufacturers or regular dealers of products sold to the Federal government as defined in accordance with the PCA, for reasons independent of the PCA requirement.

It is the Department's belief that the promulgation of special rules defining these terms is not necessary, and that the former definitions may be adapted, if appropriate, by other Federal agencies. The definitions will also be used to resolve questions of PCA eligibility in contracts awarded prior to the promulgation of this rule. However, the Department, for the reasons discussed above, is particularly interested in obtaining public comment on the appropriateness and feasibility of its proposal not to issue special rules defining the terms ''manufacturer'' or ''regular dealer,'' and any adverse effect this might have on any other Federal programs, such as those of the Small Business Administration.

This rule does not address the FASA amendments to certain laws that waive the Davis-Bacon Act's (DBA) prevailing wage requirements for certain volunteers on Federally-assisted construction projects. Subtitle C of Title VII of FASA (sections 7301–7306, cited as the ''Community Improvement Volunteer Act of 1994) amends the Library Services and Construction Act, the Indian Self-Determination and Education Act, sections 329 and 330 of the Public Health Services Act, the Indian Health Care Improvement Act, and the Housing and Community Development Act of 1974 to provide an exception from DBA prevailing wage requirements for individuals who volunteer services to State and local public entities and to nonprofit entities. The Department expects to publish a notice of proposed rulemaking which will address the implementation of these provisions during 1995.

As a point of information, contracting agencies and contractors should also be aware that section 4104(b) of FASA amended the Miller Act to establish a threshold of $100,000 for construction contracts covered by its bonding requirements. While this law is often associated with the DBA, the Department has no responsibility for its administration.

Executive Order 12866/Section 202 of the Unfunded Mandate Reform Act of 1995

This proposed rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866, nor does it require a section 202 statement under the Unfunded Mandates Reform Act of 1995. The rule merely adopts technical changes in regulations mandated by FASA. While the new statutory threshold of $100,000 under the Contract Work Hours and

Safety Standards Act can be expected to reduce procurement burdens on purchases under $100,000, contractors awarded such contracts continue to be obligated to pay weekly overtime under the Fair Labor Standards Act. Likewise, the repeal of the ''manufacturer'' and ''regular dealer'' requirements under PCA may be expected to increase competition for certain supply contracts; however, the impact on procurement costs resulting from an enlarged pool of eligible bidders is not clearly apparent, and could be minimal. Accordingly, these changes are not expected 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 Executive Order 12866 and section 202 of the Unfunded Mandate Reform Act of 1995. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The Department has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule implements statutory changes enacted by FASA, and furthers its streamlining objectives. The repeal of the ''manufacturer'' and ''regular dealer'' requirements under PCA will likely increase the number of eligible bidders on supply contracts, many of whom would be small entities, which would have beneficial effects consistent with the purpose of the Regulatory Flexibility Act. The elimination of PCA bidder requirements will also simplify the processing of eligibility protests on bidder eligibility and will otherwise streamline the procurement process. While these and other benefits of the rule would be difficult, if not impossible, to quantify, the rule is not expected to have a ''significant economic impact on a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act, and the Department has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. A regulatory flexibility analysis is not required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 4

Administrative practice and procedure, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

29 CFR Part 5

Administrative practice and procedures, Government contracts, Investigations, Labor, Minimum wages, penalties, Reporting and recordkeeping requirements, Wages.

41 CFR Parts 50–201 and 50–206

Administrative practice and procedures, Child labor, Government contracts, Government procurement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

For the reasons set forth above, 29 CFR part 4, 29 CFR part 5, 41 CFR part 50–201, and 41 CFR part 50–206 are proposed to be amended as set forth below.

Signed at Washington, DC., on this 31st day of August, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

Accordingly, the following parts of the Code of Federal Regulations are proposed to be amended:

(a) Part 4, Title 29, Code of Federal Regulations (29 CFR part 4);

(b) Part 5, Subpart A, Title 29, Code of Federal Regulations (29 CFR part 5);

(c) Part 50–201, Chapter 50 of Title 41, Code of Federal Regulations (41 CFR part 50–201); and

(d) Part 50–206, Chapter 50 of Title 41, Code of Federal Regulations (41 CFR part 50–206), as set forth below.

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

1. Authority citation for part 4 continues to read as follows:

Authority: 41 U.S.C. 351, *et seq.,* 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

2. In § 4.181, paragraph (b)(1) is proposed to be revised to read as follows:

* * * * *

(b) *Contract Work Hours and Safety Standards Act.* (1) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332) applies generally to Government contracts, including services contracts in excess of $100,000, which may require or involve the employment of laborers and mechanics. Guards, watchmen, and many other classes of service employees are laborers or mechanics within the meaning of such Act. However, employees rendering only professional services, seamen, and as a general rule those whose work is only clerical or supervisory or nonmanual in nature, are not deemed laborers or mechanics for purposes of the Act. The wages of every laborer and mechanic for performance of work on such contracts must include compensation at a rate not less than 1½ times the employee's basic rate of pay for all hours worked in any workweek in excess of 40. Exemptions are provided for certain transportation and communications contracts, contracts for the purchase of supplies ordinarily available in the open market, and work, required to be done in accordance with the provisions of the Walsh-Healey Act.

* * * * *

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

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

Authority: 40 U.S.C. 276a–176a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; and the statutes listed in section 5.1(a) of this part.

4. In § 5.5, paragraph (b) is proposed to be revised to read as follows:

§ 5.5 Contract provisions and related matters.

* * * * *

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of

this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

* * * * *

§ 5.15 [Amended]

5. In § 5.15, paragraph (b) is proposed to be amended by removing paragraphs (b)(1) and (2), and by redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(1), (2), and (3), respectively.

Title 41—Public Contracting and Property Management

CHAPTER 50—PUBLIC CONTRACTS, DEPARTMENT OF LABOR

PART 50–201—GENERAL REGULATIONS

6. The authority citation for part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40.

7. Sections 50–201.1 and 50–201.2 are proposed to be redesignated as §§ 50.201.3 and 50–201.4, respectively, and paragraph (a) of the clause in § 50–201.3, as newly redesignated, is proposed to be removed, and paragraphs (b) through (j) are proposed to be redesignated as paragraphs (a) through (i), respectively, and the title of the clause is proposed to be amended to read as follows:

REPRESENTATIONS AND STIPULATIONS PURSUANT TO PUBLIC LAW 846, 74TH CONGRESS, AS AMENDED

§ 50–201.101 [Removed]

§ 50–201.102 through 50–201.106 [Redesignated as §§ 50–201.101 through 50–201.105]

8. Section 50–201.101 is proposed to be removed, and §§ 50–201.102 through 50–201.106 are proposed to be redesignated as §§ 50–201.101 through 50–201.105, respectively.

§ 50–201.604 [Removed]

9. Section 50–201.604 is proposed to be removed.

PART 50–206—THE WALSH-HEALEY PUBLIC CONTRACTS ACT INTERPRETATIONS

10. The authority citation for part 50–206 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038, 41 U.S.C. 38, Secretary of Labor's Order No. 16–75, 40 FR 55913, and Employment Standards Order 2–76, 41 FR 9016.

§§ 50–206.1 and 50–206.2 [Redesignated as 50–201.1 and 50–201.2]

§§ 50–206.3 and 50–206.50 through 50–206.56 [Removed]

11. In part 50–206, §§ 50–206.1 and 50–206.2 are proposed to be redesignated as §§ 50–201.1 and 50.201.2 in part 50–201, respectively, and the remainder of part 50–206 is proposed to be removed.

[FR Doc. 95–22139 Filed 9–6–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established an Indian Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Indian gas valuation under its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA.

This notice establishes meeting times and location for October and November 1995.

DATES: The Committee will have meetings on the dates and the times shown below:

Tuesday, October 17, 1995—9:30 a.m. to 5 p.m.
Wednesday, October 18, 1995—8 a.m. to 5 p.m.
Thursday, October 19, 1995—8 a.m. to 5 p.m.
Tuesday, November 7, 1995—9:30 a.m. to 5 p.m.
Wednesday, November 8, 1995—8 a.m. to 5 p.m.
Thursday, November 9, 1995—8 a.m. to 5 p.m.

ADDRESSES: These meetings will be held in the building 85 auditorium, Denver Federal Center, located at West 6th Avenue and Kipling Streets, Lakewood, Colorado.

Written statements may be submitted to Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, Colorado, 80225–0165, telephone number (303) 231–3899, fax number (303) 231–3194.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days after each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: August 31, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–22204 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA13

Proposed Amendment to the Bank Secrecy Act Regulations—Requirement to Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing rules for the centralized filing with it of reports of suspicious transactions under the Bank Secrecy Act. The proposal is a key to the creation of a new method for the reporting, on a uniform ''Suspicious Activity Report,'' of suspicious

transactions and known or suspected criminal violations by depository institutions; related rules have been or will be issued by the five federal financial supervisory agencies that examine and regulate the safety and soundness of depository institutions. The new centralized reporting system will eliminate the need for burdensome filing of multiple copies of reports with various federal regulatory and law enforcement agencies and will ensure more effective use of the information reported to such agencies.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before October 10, 1995.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, *Attention:* NPRM—Suspicious Transaction Reporting.

Submission of Comments: An original and four copies of any comment must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

Inspection of Comments: Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the Treasury Library, which is located in room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment at the Treasury Library by telephoning (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Charles Klingman, Office of Financial Institutions Policy, FinCEN, at (703) 905–3920, or Joseph M. Myers, Attorney-Advisor, Office of Legal Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document proposes to add a new section 103.21 to 31 CFR Part 103 to require banks and other depository institutions [1] to report to the Department of the Treasury any suspicious transaction relevant to a possible violation of law or regulation. The amendments are proposed by FinCEN, to implement the authority granted to the Secretary of the Treasury by 31 U.S.C. 5318(g), in coordination with the Office of the Comptroller of the Currency (the ''OCC''), the Board of Governors of the Federal Reserve System (the ''Board''), the Federal Deposit Insurance Corporation (the ''FDIC''), the Office of Thrift Supervision (the ''OTS''), and the National Credit Union Administration (the ''NCUA'').

The proposed regulation creates a single coordinated process for the reporting of suspicious transactions under the Bank Secrecy Act and known or suspected criminal violations involving such institutions under the regulations of the regulatory agencies. The new process represents a fundamental change in the manner in which potential violations and suspicious activities are reported by banks and other depository institutions to the federal government.

II. Background

A. Statutory Provisions

The Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The authority to require reporting of suspicious transactions was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (''Annunzio-Wylie''), Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, to require designation of a single government recipient for reports of suspicious transactions.

The provisions of 31 U.S.C. 5318(g) deal with the reporting of suspicious transactions by financial institutions subject to the Bank Secrecy Act and the protection from liability to customers of persons who make such reports. Subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

> A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that neither a financial institution, nor any director, officer, employee, or agent

> That makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority . . . shall . . . be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.'' This designation is not to preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency ''under any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C). The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement agency.'' *Id*., at subsection (g)(4)(B).

B. Coordinated Process for Reporting Suspicious Transactions

At present, banks report transactions that indicate the existence of ''known or suspected violations of federal law'' by filing multiple copies of criminal referral forms with their respective primary federal financial regulator and with federal law enforcement agencies (including in most cases the Federal Bureau of Investigation, the United States Secret Service, and the Criminal Investigation Division of the Internal Revenue Service). The referral forms (each promulgated by a different regulator, under independent but parallel authority) are not uniform, and the requirement for multiple filings imposes a considerable administrative burden on filers. In the absence of a central repository, law enforcement and

[1] References to ''bank'' include not only commercial banks, but also thrift institutions, credit unions, and other types of depository institutions. See 31 CFR 103.11(b) (defining ''bank'' for purposes of 31 CFR Part 103).

regulatory agencies—receiving different forms from different filers in different regions of the country—struggle to analyze and correlate the filings and to coordinate investigations.

At the same time, banks (and other financial institutions) are required under the Bank Secrecy Act to file a Currency Transaction Report (or ''CTR'') to report transactions in currency of more than $10,000. The CTR form includes a box that can be checked to indicate that the currency transaction is ''suspicious.'' [2] The box on the CTR may also be used to report suspicious currency transactions in amounts less than $10,000. In practice, some financial institutions have also used the CTR form to report non-currency transactions that they believed to be ''suspicious'' but did not rise to the level of a known or suspected violation of law. Still other financial institutions reported such transactions by telephone to local offices of federal law enforcement or regulatory agencies. In many cases, financial institutions that were uncertain what to do naturally and commendably filed all possibly applicable reports.

As also discussed in proposed regulations issued in connection with the creation of the unified reporting system by the Office of the Comptroller of the Currency, 60 FR 34,476 (July 3, 1995), and the Board of Governors of the Federal Reserve System, 60 FR 34,481 (July 3, 1995), the current criminal referral system is cumbersome and burdensome, for both regulators and depository institutions. Moreover, it does not maximize the amount of usable information available to law enforcement officials and bank regulators. Therefore, beginning in 1991, the regulatory agencies began working on a project to improve the criminal referral process, with the goal of creating a single form and placing all referrals in an automated information system, managed on their behalf by FinCEN, to which all regulators and FinCEN would have access. The purpose of that project, begun under the auspices of the inter-agency Bank Fraud Working Group, was to assure that information generated by referrals of banking crimes would be uniformly available both as a basis for regulatory decisions and for analysis of the effectiveness of the reporting process and banking crime enforcement efforts.

A year later, Annunzio-Wylie vested broad suspicious transaction reporting authority in the Department of the Treasury. Soon thereafter, a ''Money Laundering Review Task Force,'' made up of enforcement and regulatory officials, was established in the Office of the then-Assistant Secretary (Enforcement) to examine the effectiveness of Treasury's anti-money laundering policies. The Task Force's analysis emphasized that identification and reporting of suspicious activity can and should be one of law enforcement's most effective tools against money laundering, so long as the reporting is not burdensome and reflects as much guidance about money laundering transactions and methods as government can provide. The work of the Task Force resulted in a consensus at Treasury that a reasoned implementation of Treasury's expanded suspicious transaction reporting authority (together with the accompanying ''know your customer'' rule) would increase the effectiveness of counter-money laundering efforts and permit significant reduction in mechanical currency transaction reporting requirements.

The single integrated system of which this proposed rule is a part thus reflects (i) the effect on the pre-existing criminal referral process of the statutory grant of central authority to Treasury, under the Bank Secrecy Act, to require reporting of all suspicious transactions (not merely transactions in currency or its equivalents) involving financial institutions, (ii) the mutual desire of Treasury and the financial regulators to simplify and reduce the burdensomeness of the reporting process, and (iii) the centrality of suspicious transaction reporting to Treasury counter-money laundering policy.

The central feature of the integrated reporting system is the creation of a single reporting form, filing point, and information system for all reports of suspicious activity made by depository institutions. The single form standardizes filing requirements and facilitates the creation of a single, automated data base containing information from all filings. The single filing point not only eliminates the need for multiple copies but also permits magnetic filing of reports by most institutions capable of and accustomed to making such filings with the Internal Revenue Service. (In a related development, as explained more fully below, the requirement that supporting documentation be filed with the report has been eliminated.) Finally, the single data base will permit rapid dissemination to appropriate law enforcement agencies of reports within their jurisdiction, more thorough analysis and tracking of those reports, and, in time, the provision to the financial communities of information about trends and patterns gleaned from the information reported.

Each agency involved has issued or shortly will issue a proposed rule requiring reporting under its respective authority. It is anticipated that those proposed rules will be conformed to one another in their final form and that they will be identical with Treasury's suspicious transaction reporting rules. Thus a financial institution will file a suspicious activity report in satisfaction of both the rules of FinCEN and the rules of the applicable banking regulator or regulators.

The selection of a single term—Suspicious Activity Report (''SAR'')—for the new report reflects the overlap and consolidation of the two reporting requirements. There will be a significant group of activities that are required to be reported both under the authority of 31 U.S.C. 5318(g) and under the financial regulatory agencies own administrative requirements. A single filing, however, will suffice to comply with all requirements.

C. Importance of Suspicious Transaction Reporting in Treasury's Anti-Money Laundering Program

The Congressional mandate to require reporting of suspicious transactions recognizes two basic points that have increasingly become central to Treasury's anti-money laundering and anti-financial crime programs. First, it is to financial institutions that money launderers must go. Second, the officials of those institutions are more likely than government officials to have a sense as to what transactions appear to lack commercial justification or otherwise cannot be explained as falling within the usual methods of legitimate commerce. Money laundering transactions are often designed to appear legitimate in order to avoid detection. Under these circumstances, the creation of a meaningful system for detection and prevention of money laundering is impossible without the cooperation of financial institutions.

The provisions of Annunzio-Wylie and the Money Laundering Suppression Act recognize that the traditional reliance of Treasury counter-money laundering programs on the reporting of currency transactions between financial institutions and their customers and the transportation of currency and certain monetary instruments into or out of the United States is neither adequate nor

[2] The revised and simplified CTR that goes into effect on October 1, 1995 eliminates the box in anticipation of the adoption of the Suspicious Activity Report for reporting of, *inter alia*, suspicious currency transactions. An advance copy of the revised CTR was issued by FinCEN in early May 1995. *See* ''FinCENnews'', May 10, 1995.

cost effective. The change in emphasis from routine reporting of all currency transactions above a certain amount to reporting of information most likely to be of use to law enforcement officials and financial regulators is a key component of the flexible and cost-efficient compliance system required to prevent the use of the nation's financial system for illegal purposes.

The placement of illegally-derived currency into the financial system and the smuggling of such currency out of the country remain two of the most serious issues facing financial law enforcement efforts in the United States and around the world. But banks and other depository institutions, in cooperation with law enforcement agencies and federal and state banking regulators, have responded in many positive ways to the challenges posed by money laundering. It is now far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed and far easier to identify and isolate those institutions and officials still willing to assist or ignore money launderers.

Moreover, the placement of currency into the financial system is at most only the first stage in the money laundering process. While many currency transactions are *not* indicative of money laundering or other violations of law, many non-currency transactions *can* indicate illicit activity, especially in light of the breadth of the statutes that make money laundering itself a crime. *See* 18 U.S.C. 1956 and 1957.

No system for the reporting of suspicious transactions can be effective unless information flows *from* as well as *to* the government. Thus, Treasury recognizes its responsibility to issue and update guidelines about patterns of suspicious activity.

The reporting of suspicious transactions is also a key to the emerging international consensus on the prevention of money laundering. One of the central recommendations in the Report of the Financial Action Task Force of the G–7 nations (the United States, The United Kingdom, Germany, France, Italy, Japan, and Canada) is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be permitted or required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Report (April 19, 1990), Section III(B)(3) (Recommendation 16). The European Community's *Directive on prevention of the use of the financial system for the purpose of money laundering* calls for member states to

> Ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering . . . by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States,* OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[3]

D. Suspicious Transaction Reporting by Financial Institutions Other Than Banks

31 U.S.C. 5318(g) authorizes the Treasury to require the reporting of suspicious transactions by all financial institutions, and extends to financial institutions other than banks. FinCEN intends to extend the obligation to report suspicious transactions to such other institutions in the near future. However, this proposed rule applies only to reporting of suspicious transactions by banks and other depository institutions.

III. Specific Provisions

A. 103.11(qq) FinCEN

FinCEN is specifically defined for the first time in the Bank Secrecy Act regulations, because FinCEN is being designated by the Secretary of the Treasury as the central recipient of SARs filed pursuant to 31 U.S.C. 5318.

B. 103.11(r) Transaction

The definition of ''transaction in currency'' in the Bank Secrecy Act regulations has been changed to a definition of ''transaction.'' The definition conforms to the definitions in 18 U.S.C. 1956 used when Congress criminalized money laundering in 1986.[4] This definition of transaction is broad enough to cover all activity that will be reported on an SAR.

Treasury does not believe that the change varies the substance of the requirement to report currency transactions under 31 CFR 103.22, other than in the case of deposits of cash in safe deposit boxes, and the change is not intended to make any other modifications in that requirement. Treasury would be interested in comments concerning the safe deposit box issue and other instances in which financial institution personnel believe that application of the new definition, required for implementation of the suspicious transaction reporting rule, would unintentionally alter the separate currency transaction reporting requirement.

C. 103.20 Determination by the Secretary

Section 103.21 is redesignated as section 103.20 in order to make room in Subpart B, ''Reports Required To Be Made,'' for the suspicious transaction reporting requirement in this proposed rule.

D. 103.21 Reports of Suspicious Transactions

New section 103.21 contains the rules setting forth the obligation of banks to file reports of suspicious transactions. Paragraph (a) contains the general statement of the obligation to file, and a general definition of the term ''suspicious transaction.'' The obligation extends only to transactions conducted or attempted by, at, through, or otherwise involving, the bank; however, it is important to recognize that transactions are reportable under this rule and 31 U.S.C. 5318(g) whether or not they involve currency.

The proposed rule designates three classes of transactions as requiring reporting. The first class, described in proposed paragraph (a)(2)(i), includes transaction involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class, described in proposed paragraph (a)(2)(ii), involves transactions designed to evade the requirements of the Bank Secrecy Act. The third class, described in proposed paragraph (a)(2)(iii), involves transactions that appear to have no business purpose or vary so substantially from normal commercial activities or activities appropriate for the particular customer or class of customer as to have no reasonable explanation.

Of course, determinations as to whether a report is required must be based on all the facts and circumstances relating to the transaction and bank customer in question. Different fact patterns will require different types of judgments. In some cases, the facts of the transaction may clearly indicate the need to report. For example, continued payments or withdrawals of currency in amounts each beneath the currency transaction reporting threshold

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[3] The OAS reporting requirement is linked to the provision of the Model Regulations that institutions ''shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.'' OAS Model Regulation, Article 13, section 1.

[4] *See* Pub. L. 99–570, Title XIII, 1352(a), 100 Stat. 3207–18 (Oct. 27, 1986).

applicable under 31 CFR 103.22, or multiple exchanges of small denominations of currency into large denominations of currency, can indicate that a customer is involved in suspicious activity. Similarly, the fact that a customer refuses to provide information necessary for the bank to make reports or keep records required by this Part or other regulations, provides information that a bank determines to be false, or seeks to change or cancel the transaction after such person is informed of reporting requirements relevant to the transaction or of the bank's intent to file reports with respect to the transaction, would all indicate that an SAR should be filed.

In other situations a more involved judgment may need to be made whether a transaction is suspicious within the meaning of the rule. Transactions that raise the need for such judgments may include, for example, (i) funds transfers, payments or withdrawals that are not commensurate with the stated business or other activity of the person conducting the transaction or on whose behalf the transaction is conducted; (ii) transmission or receipt of funds transfers without normal identifying information or in a manner that indicates an attempt to disguise or hide the country of origin or destination or the identity of the customer sending the funds or of the beneficiary to whom the funds are sent; or (iii) repeated use of an account as a temporary resting place for funds from multiple sources without a clear business purpose therefor. The judgments involved will also extent to whether the facts and circumstances and the institution's knowledge of its customer provide a reasonable explanation for the transaction that removes it from the suspicious category.

The means of commerce and the techniques of money launderers are continually evolving, and there is no way to provide an exhaustive list of suspicious transactions. For these reasons, Treasury ultimately must rely on creation of a working partnership that enables the financial community to apply its knowledge of both its customers and of the developments in financial commerce to identify and report suspicious activity. At the same time, Treasury intends to provide meaningful guidance to the banking community concerning the particular circumstances and types of behavior that Treasury believes indicate suspicious activity.

31 U.S.C. 5318(g)(1) authorizes Treasury to require suspicious transaction reporting not only by financial institutions but by ''any director, officer, employee, or agent of any financial institution.'' This proposed rule addresses reporting by banks, but it is not intended to reduce the obligations of bank employees or agents, within the context of a bank's reporting and Bank Secrecy Act compliance obligations, but simply to avoid at this time creating an obligation on the part of bank employees and agents independent of those general obligations. It is anticipated that a forthcoming notice of proposed rulemaking on anti-money laundering compliance programs will contain additional guidance on this matter.

Paragraph (b) sets forth the filing procedures to be followed by banks making reports of suspicious transactions. Reports are to be made within 30 days after the bank becomes aware of the suspicious transaction by completing an SAR and filing it in a central location, to be determined by FinCEN. Supporting documentation is to be collected and maintained separately by the bank, and made available to law enforcement, as necessary. Special provision is made for situations requiring immediate attention, in which case banks are to telephone the appropriate law enforcement authority in addition to filing an SAR. These filing procedures represent a significant improvement over the procedures currently followed by banks filing criminal referral forms. There is no requirement to file multiple copies of forms with multiple agencies, and no requirement to file supporting documentation with the SAR itself.

Paragraph (c) continues in effect the longstanding exception from the obligation to file in the case of a robbery or burglary that is otherwise reported to appropriate law enforcement authorities. Treasury and the financial regulators recognize that bank robbery and burglary require the immediate attention of the appropriate police authorities, and are not the types of crimes about which this regulation is directly concerned.

Paragraph (d) states the obligation of filing banks to maintain copies of SARs and the original related documentation for a period of ten years from the date of filing. As indicated above, supporting documentation is to be made available to FinCEN and appropriate law enforcement authorities on request.

Paragraph (e) incorporates the terms of 31 U.S.C. 5318 (g)(2) and (g)(3). This paragraph thus specifically prohibits those filing SARs from making any disclosure, except to authorized law enforcement and regulatory agencies, about either the reports themselves, the information contained therein, or the supporting documentation. This paragraph thus also restates the broad protection from liability for making reports of suspicious transactions, and for failures to disclose the fact of such reporting, contained in the statute. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because Treasury recognizes the importance of these statutory provisions to the overall effort to encourage meaningful reports of suspicious transactions, they are described in the regulation in order to remind compliance officers and others of their existence.

Finally, paragraph (f) notes that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule shall constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations, which may subject non-complying banks to enforcement action. The paragraph also notes that compliance with the obligation to report suspicious transactions will have no direct bearing on a bank's potential exposure under the criminal provisions of Title 18 of the U.S. Code. The ''safe harbor'' provisions of 31 U.S.C. 5318(g) do not protect against criminal prosecutions.

IV. Comments

FinCEN invites public comment on all aspects of this proposal. FinCEN is particularly interested in, and specifically requests that financial institutions comment on, the following issues.

1. Consolidating information reported on the existing criminal referral form (CRF) with that reported on suspicious currency transaction reports was done to eliminate confusion and avoid duplicate reporting. Currently, in the absence of specific guidelines, each financial institution has developed internal and specific thresholds and procedures for reporting different types of activity on each form. In this proposed rule, Treasury has attempted to describe instances where, and circumstances in which, a financial institution would determine a transaction to be suspicious and file a report. However, no regulation could possibly cover all instances of potential suspicious activity. Conversely, a regulation should not be crafted so broadly as to provide no parameters or guidelines to follow. Treasury needs to know if the terms set forth in this proposed regulation are clear, specific, and sufficient as a basis for financial institutions to determine when activity is suspicious. If not, Treasury requests specific, detailed suggestions for

substitute language that should be considered.

2. In addition, over 100 predicate offenses may serve as the basis for a criminal money laundering charge under 18 U.S.C. 1956. The instructions for the SAR, as well as the proposed notices issued by the regulatory agencies, provide specific thresholds for reporting particular types of violations. Treasury is interested in the industry's position as to whether similar types of thresholds should be imposed for reporting Bank Secrecy Act and money laundering violations.

3. Finally, Treasury understands that, after filing a report on a particular customer, a financial institution may be confronted with a decision as to whether to terminate its relationship with that customer. Treasury believes that unless instructed by an authorized official, this is a decision which must be made by the financial institution. However, Treasury is interested in working with the industry to develop procedures which could help frame such decisions.

The comment period for this rule is 30 days. Although the comment period is shorter than that which would normally be employed, many of the terms reflected in this rule are also contained in the rules already proposed by the financial regulators. FinCEN will have access to those comments, and it is believed that on that basis the short comment period is justified, in light of the desire of the agencies involved to commence the operation of the less burdensome single form reporting system on October 1, 1995.

V. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant financial impact on a substantial number of small depository institutions.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to OMB, Paperwork Reduction Project, Washington, DC 20503, with copies to FinCEN, Office of Financial Institutions Policy, 2070 Chain Bridge Road, Suite 200, Vienna, Virginia 22182.

VII. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in 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 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendment

For the reasons set forth above in the preamble, 31 CFR Part 103 is proposed to be amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. In § 103.11, paragraph (r) is revised and paragraph (qq) is added to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(r) *Transaction.* Transaction means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

(qq) *FinCEN.* FinCEN means the Financial Crimes Enforcement Network, an office within the Office of the Under Secretary (Enforcement) of the Department of the Treasury.

3. Section 103.21 is redesignated as § 103.20.

4. New § 103.21 is added to read as follows:

§ 103.21 Reports of suspicious transactions.

(a) *General.* (1) Every bank shall file with the Treasury Department, as required by this § 103.21, a report of any suspicious transaction relevant to a possible violation of law or regulation.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through, or otherwise involves, the bank, and

(i) The bank knows, suspects, or has reason to suspect that the transaction involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under federal law;

(ii) The bank knows, suspects, or has reason to suspect that the transaction is designed to evade any requirements of this Part or of any other regulations promulgated under the Bank Secrecy Act; or

(iii) The transaction or its details appear to have no business purpose, the transaction varies from the normal methods of financial commerce, or the transaction is not the sort in which the particular customer or class of customer would normally be expected to engage, and, in each case, the bank knows of no reasonable explanation for the transaction.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing, in accordance with the instructions, a Suspicious Activity Report (''SAR''), and collecting and maintaining supporting documentation related information, in accordance with this rule.

(2) *Where to file.* The SAR shall be filed in a central location, to be determined by FinCEN.

(3) *When to file.* A bank is required to file each SAR not later than 30 calendar days after the first date on which the bank becomes aware of the facts constituting the transaction to which the report relates. If no suspect is identified on the date of detection of the incident triggering the filing, a bank may delay

filing an SAR for an additional 30 calendar days, but in no case shall reporting be delayed more than 60 calendar days after the date of the transaction. In situations involving violations that require immediate attention, such as when a reportable violation is ongoing, the bank shall immediately notify by telephone the appropriate law enforcement authority in addition to filing an SAR.

(c) *Exception.* A bank is not required to file a suspicious transaction report for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) *Retention of records.* A bank shall maintain a copy of any SAR filed and the original of any related documentation for a period of ten years from the date of filing the SAR, unless the bank is informed by FinCEN in writing that the bank may discard the materials sooner. Supporting documentation shall be identified, segregated, and treated as filed with the SAR. A bank shall make all supporting documentation available to FinCEN and any appropriate law enforcement agencies upon request.

(e) *Confidentiality of reports; limitation of liability.* No financial institution, nor any director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this Part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose an SAR, the information contained in an SAR or any information contained in the documentation supporting an SAR, except where such disclosure is requested by a law enforcement agency, shall refuse to produce the SAR or such other information. *See* 31 U.S.C. 5318(g)(2). A bank, and any director, officer, employee, or agent of such bank, that make a report pursuant to this § 103.21 shall be protected from liability for any disclosure contained, for failure to disclosure the fact of such report, or both, to the extent provided by 31 U.S.C. section 5318(g)(3).

(f) *Compliance.* Compliance with these rules shall be audited by the Department of the Treasury or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this rule shall be a violation of the reporting rules of the Bank Secrecy Act and of 31 CFR Part 103. Such failure may also violate provisions of Titles 12 and 15 of the Code of Federal Regulations. Whether or not a bank satisfies the requirements of this reporting rule has no direct bearing on the obligations or possible liabilities of such bank or its directors, officers, employees, or agents, under provisions of Title 18 of the United States Code.

Dated: August 30, 1995.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 95–22223 Filed 9–6–95; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Advisory Committee

AGENCY: National Park Service.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act (5 U.S.C., Appendix), that a meeting of the Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Advisory Committee will be held on Thursday and Friday, September 14 and 15, 1995.

The Committee members will meet at 9 a.m. at the Sheraton Eastham, Route 6, Eastham, MA for the first of three, two-day meetings which will be held for the following reasons:

September 14, 1995—Thursday

1. Welcoming Remarks by National Park Service.
2. Discussion of Proposed Agenda.
3. Presentation by each member of their group's perspective.
4. Adoption of Organizational Protocols.
5. Public Participation Period.
6. Adjournment.

September 15, 1995—Friday

1. Data Presentation by NPS on Off-Road Vehicles.
2. Distribution of Proposed Draft Rule.
3. Review and Discussion of Draft Rule.
4. Public Participation Period.
5. Discussion of Agenda for Next Meeting.
6. Set Date for Third Set of two-day Sessions.
7. Adjournment.

The meeting is open to the public. It is expected that 75 persons will be able to attend the meeting in addition to the Committee members.

Due to an unintentional mis-routing of this notice while it was being processed within the National Park Service, the notice could not be published at least 15 days prior to the meeting dates. The National Park Service regrets this error, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of committee members who have adjusted their schedules to accommodate the proposed meeting dates, and the high level of anticipation by all parties who will be affected by the outcome of the committee's actions. Since the proposed meeting dates have received widespread publicity in area news media and among the parties most affected, the National Park Service believes that the public interest will not be adversely affected by the less-than-15-days advance notice in the **Federal Register**.

The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to advise the National Park Service with regard to proposed rulemaking governing off-road vehicle use at Cape Cod National Seashore.

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Such presentations may be made to the Committee during the Public Participation Period the day of the meeting, or in writing to the Park Superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Bernard C. Fagan,

Acting Chief, Office of Policy, National Park Service.

[FR Doc. 95–22368 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–70–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–142; RM–8685]

Radio Broadcasting Services; Zapata, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Arturo Lopez requesting the allotment of Channel 228A to Zapata, Texas. Channel 228A can be allotted to Zapata, Texas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 228A at Zapata are 26–54–30 and 99–16–18. Mexican concurrence will be requested for this proposal.

DATES: Comments must be filed on or before October 23, 1995, and reply comments on or before November 7, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arturo Lopez, 1401 West Main Street, Rio Grande City, Texas 78582 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–142, adopted August 23, 1995, and released August 31, 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 contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–22093 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–141; RM–8642]

Radio Broadcasting Services; Frederiksted, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jose J. Arzuaga proposing the allotment of Channel 298B1 at Frederiksted, Virgin Islands, as the community's third local FM transmission service. An engineering analysis has determined that Channel 298B1 can be allotted to Frederiksted in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 298B1 at Frederiksted North Latitude 17–42–48 and West Longitude 64–53–00.

DATES: Comments must be filed on or before October 23, 1995 and reply comments on or before November 7, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James L. Oyster, Esq., Route 1, Box 203A, Castleton, Virginia 22716 (Counsel for Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–141, adopted August 24, 1995, and released August 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–22092 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–48; DA 95–1870]

Children's Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission granted a request filed jointly by the National Broadcasting Company, Inc., CBS Inc. and Capital Cities/ABC, Inc., for a 30-day extension of time to file comments and reply comments in this proceeding. The initial deadline for filing comments was June 16, 1995, and the initial deadline for filing reply comments was July 17, 1995. By *Order* released June 1, 1995, the time for filing comments was extended to September 14, 1995, and the time for filing reply comments was extended to October 16, 1995. The Commission determined that an additional extension of time was warranted in order to facilitate the development of a full and complete record.

DATES: Comments are now due on October 16, 1995, and reply comments are now due on November 15, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Mass Media Bureau (202) 776–1653.

SUPPLEMENTARY INFORMATION:

Adopted: August 25, 1995.
Released: August 25, 1995.
By the Chief, Mass Media Bureau.
Comment Date: October 16, 1995.
Reply Comment Date: November 15, 1995.

1. On April 5, 1995, the Commission adopted a *Notice of Proposed Rule in Making* MM Docket 93–48 (60 FR 20586, April 26, 1995) seeking comment on proposals to amend the Commission's rules implementing the Children's Television Act of 1990. Comments on the *Notice* were initially due on June 16, 1995, and reply comments were initially due on July 17, 1995. By *Order* released June 1, 1995 (60 FR 30506, June 9, 1995), the time for filing comments in this proceeding was extended to September 14, 1995, and the time for filing reply comments was extended to October 16, 1995.

2. On August 24, 1995, the National Broadcasting Company, Inc., CBS Inc. and Capital Cities/ABC, Inc. (''Petitioners'') filed a joint request for an additional extension of time to file comments and reply comments in this proceeding, until October 16, 1995, and

November 16, 1995, respectively. Petitioners argue that additional time is needed to review a study being prepared by the National Association of Broadcasters relevant to the issues raised by the Commission in the *Notice*.

3. As set forth in Section 1.46 of the Commission's Rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. Moreover, a 90-day extension of time has already been granted in this proceeding. However, in view of the circumstances outlined by Petitioners, we believe that an additional 30-day extension of time to file comments and reply comments is warranted in order to facilitate the development of a full and complete record.

4. Accordingly, it is ordered that the Request for Extension of Time filed in MM Docket No. 93–48 by the National Broadcasting Company, Inc., CBS Inc., and Capital Cities/ABC, Inc. is Granted.

5. It is further ordered that the time for filing comments in this proceeding is extended to October 16, 1995, and the time for filing reply comments is extended to November 15, 1995.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 0.204(b), 0.283 and 1.45 of the Commission's Rules, 47 CFR 0.204(b), 0.283 and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95–22094 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 89–552, GN Docket No. 93–252, PP Docket No. 93–253; FCC 95–312]

Wireless Services; Private Land Mobile Radio

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission adopts a *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking,* which proposes a new framework for the operation and licensing of the 220–222 MHz band (220 MHz service). (The summary of the *Second Memorandum Opinion and Order* portion of this decision may be found elsewhere in this edition of the **Federal Register**.) This action is taken as part of the Commission's continuing implementation of the new regulatory framework for mobile radio services enacted by Congress in Section 6002(b) the Omnibus Budget Reconciliation Act of 1993. The primary goal of this proceeding is to establish a flexible regulatory framework that will allow for more efficient licensing of the 220–222 MHz band, eliminate unnecessary regulatory burdens on both existing and future licensees, and enhance the competitive potential of the 220 MHz service in the mobile services marketplace.

DATES: Comments are due on or before September 27, 1995, and reply comments are due on or before October 12, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Martin Liebman, Wireless Telecommunications Bureau (202) 418–1310, or Rhonda Lien, Wireless Telecommunications Bureau (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Third Notice of Proposed Rule Making* (Third NPRM) portion of the Commission's *Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order* in PR Docket No. 89–552, GN Docket No. 93–252, PP Docket No. 93–253; FCC 95–312, adopted July 28, 1995, and released August 28, 1995. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Third Notice of Proposed Rulemaking Portion of Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking

1. The Commission, in this *Third NPRM*, proposes a new framework for the operation and licensing of the 220–222 MHz band (220 MHz service).[1] This action is taken as part of our continuing implementation of the new regulatory framework for mobile radio services enacted by Congress in Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (Budget Act), which amended Sections 3(n) and 332 of the Communications Act of 1934.[2] The Commission began the implementation of the provisions of the Budget Act with the adoption of a Notice of Proposed Rule Making in GN Docket 93–252 (58 FR 53169, October 14, 1993. In that proceeding, the Commission adopted rules governing the commercial and private mobile radio services, including the 220 MHz service, consistent with the policy of regulatory parity as reflected in the Congressional revisions to Section 332 of the Act. The proceeding the Commission is initiating with this *Third NPRM* is an outgrowth of the CMRS *Third Report and Order* (59 FR 59945, November 21, 1994), which deferred a comprehensive examination of the 220 MHz service to a separate rulemaking proceeding.

2. The Commission's primary goal in this proceeding is to establish a flexible regulatory framework that will allow for more efficient licensing of the 220–222 MHz band, eliminate unnecessary regulatory burdens on both existing and future licenses, and enhance the competitive potential of the 220 MHz service in the mobile services marketplace. In addition, the Commission seeks to ensure that licenses are granted to those who value the spectrum most highly and will maximize its use to provide the best quality and variety of service to consumers. The Commission believes its proposals strike a fair balance between the interests of current licensees and licensees to be authorized under the new rules. The adoption of the rules set forth in this *Third NPRM* will enable the continued development of the 220 MHz radio service and the implementation of a variety of new communications services to meet the future needs of the American public.

Proposals Contained in the Third NPRM

3. The *Third NPRM* invites comment on a number of issues relevant to operation and licensing of the 220 MHz service. In the category of nationwide licensing, the Commission seeks comment on whether to resolve pending mutually exclusive, non-commercial, nationwide applications by lottery, comparative hearing, or to return the applications and adopt a new licensing scheme for the 30 channels associated with the applications. If the Commission returns the applications, it makes the following proposals for Phase II nationwide licensing of these channels: (1) To license the 30 channels

[1] The Commission will refer herein to any licenses granted to this new framework as Phase II licenses. Licenses granted under the current rules are referred to herein as Phase 1 licenses.

[2] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993).

on a nationwide basis to all applicants—*i.e.*, applicants that intend to use the channels to offer commercial services as well as applicants that intend to use the channels for their private internal use; and (2) To assign these channels, in the form of three 10-channel authorizations, through competitive bidding pursuant to our tentative conclusion that the principal use of the spectrum will be for the provision of for-profit, subscriber-based services.

4. Also, the *Third NPRM* makes the following proposals for Phase II, non-nationwide licensing of the 220 MHz band. It first proposes to assign 60 channels in the 172 geographic areas defined as Economic Areas by the Bureau of Economic Analysis, Department of Commerce (''EA licenses'') and 65 channels in the geographic areas defined by five ''220 MHz Regions'' (''Regional licenses'') in the following manner:

Non-Nationwide 220 MHz, Proposed Channel Allocation Plan

EA Block	Channels
Channels 61–70	10
Channels 71–80	10
Channels 91–100	10
Channels 101–110	10
Channels 121–125	5
Channels 126–130	5
Channels 131–135	5
Channels 136–140	5
Total	60
Regional Block	
Channels 171–180	10
Channels 186–200	15
Channels 1–10	10
Channels 11–20	10
Channels 31–50	20
Total	65

5. The *Third NPRM* also proposes: (1) To allow all applicants to apply for these channels—*i.e.*, applicants that intend to use the channels for private, internal use as well as applicants that intend to use the channels to offer commercial services; (2) To assign these channels through competitive bidding based on our tentative conclusion that the principal use of the spectrum will be for the provision of for-profit, subscriber-based services; (3) To permit EA and Regional licensees to operate stations anywhere within their geographic borders, provided that their transmissions do not exceed a predicted field strength of 38 dBuV/m at their border and they protect Phase I licensees in accordance with existing co-channel separation criteria; (4) To provide a 10-year license term for EA and Regional licensees and require EA and Regional licensees to meet five and ten-year construction benchmarks; (5) To eliminate existing channel use restrictions, *i.e.*, the ''data-only'' and ''non-trunked'' channel designations; (6) To continue to assign, on a single-station basis, 10 channels exclusively to applicants eligible in the Public Safety Radio Service (the ''Public Safety Pool'') and five channels exclusively to applicants eligible in the Emergency Medical Radio Service (the ''EMRS Pool''); and (7) To continue to assign channels in the Public Safety and EMRS Pools on a first-come, first-served basis and resolve mutually exclusive applications by random selection procedures.

6. The *Third NPRM* next considers technical and operational matters and proposes modifications to the Commission's existing rules with regard to fixed operations, paging operations, and the use of 5 kHz-wide channels. Specifically, the Commission proposes to allow fixed and paging operations for all 220 MHz licensees without the requirement that such use be on an ancillary basis to land mobile operations, and to allow licensees, under certain conditions, to aggregate any and all of their authorized channels to operate on channels wider than 5 kHz.

7. The *Third NPRM* also proposes to adopt definitions for initial applications, amended applications, and applications to modify authorizations in the following manner: (1) To define initial applications for 220 MHz licenses as applications for the nationwide, EA, and Regional licenses to be assigned in Phase II; (2) To adopt the same procedures for amending applications and modifying authorizations for Phase II 220 MHz licenses that are established for other Part 90 CMRS services; (3) To require non-grandfathered CMRS 220 MHz licensees to obtain STAs under the same restrictions applicable to other non-grandfathered Part 90 CMRS licensees; and (4) To extend to all 220 MHz licensees the Part 22 renewal standards adopted in the CMRS *Third Report and Order* for part 90 CMRS services.

8. The *Third NPRM* also addresses a Petition for Rulemaking filed by Fairfield Industries, Inc. (Fairfield), and adopts proposals similar to those requested by Fairfield for secondary, fixed operation in the 220–222 MHz band.

9. Finally, the *Third NPRM* proposes competitive bidding procedures to resolve mutually exclusive initial applications filed in Phase II.

Administrative Matters

10. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 27, 1995, and reply comments on or before October 12, 1995. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

11. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Act Statement

I. Reason for Action

The action is taken to propose a new framework for the licensing and operation of the 220 MHz service, and as part of the Commission's continuing implementation of Congress revisions to Sections 3(n) and 332 of the Communications Act in the Omnibus Budget Reconciliation Act of 1993.

II. Objectives of this Action

The Commission's primary goal is to establish a flexible regulatory scheme that will allow for more efficient licensing, eliminate unnecessary regulatory burdens on both existing and future licensees, and enhance the competitive potential 220 MHz services in the mobile marketplace.

III. Legal Basis

The proposed action is authorized under Sections 4(i), 303(r), 309(j) and 332 of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected

There are approximately 3,800 non-nationwide licensees in the 220 MHz band. The potential impact of the proposals contained in this Notice on small business is hard to predict without the benefit of comment, and the actual impact will depend on the final action taken. The intention of this action is to provide licensees with more flexibility, with a minimum increased

burden. Thus, the Commission, in drafting these proposals tried to balance the needs of all licensees and potential licensees. For example, to afford licensees increased flexibility to meet consumer demand and to increase their ability to compete with other CMRS licensees, the Commission has proposed that 220 MHz licensees be permitted to operate paging and fixed systems on a primary basis and to aggregate their 5 kHz channels to operate on channels of wider bandwidth.

V. Reporting, Recordkeeping and Other Compliance Requirements

The Commission is proposing to generally decrease the burden on licensees. For example, rather than being required to obtain separate authorization for each of their base stations, non-nationwide, Phase II licensees will be permitted to operate over Commission-defined geographic areas (EAs and 220 MHz Regions) and will be allowed to construct and operate base stations anywhere within their authorized area as long as signals from those stations do not exceed a prescribed level. On the other hand, Phase II licensees who desire to operate less than 120 kilometers from Phase I co-channel stations will be required to submit a technical analysis demonstrating at least 10 dB protection to the 38 dbuV/m contour of such licensees, and all Phase II licensees will be required to submit maps and other supporting documents to demonstrate compliance with interim and final construction benchmarks.

VI. Federal Rules which Overlap, Duplicate, or Conflict with these Proposals

None.

VII. Significant Alternatives

The Commission believes that the proposals contained in this decision represent the best balance of providing licensees with the most flexibility and the least regulatory burden possible, while ensuring that license are granted to those who value the spectrum most high and will maximize its use to provide the best quality and variety of service to consumers.

12. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

13. Authority for issuance of this *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking* is contained in Sections 4(i), 303(r), 309(j), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 303(r), 309(j), and 332.

Ordering Clause

14. Accordingly, IT IS ORDERED that the Petition for Rulemaking in RM–8506 filed by Fairfield Industries, Inc. IS GRANTED to the extent indicated herein.

List of Subjects in 47 CFR Part 90

Business and industry, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22296 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 89–552, GN Docket No. 93–252; FCC 95–381]

Wireless Services; Private Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission adopts a *Fouth Notice of Proposed Rulemaking* in this proceeding, seeking comment on proposed rules that will allow existing, *i.e.,* Phase I licensees in the 220 MHz service to seek minor modifications of their licenses to construct and operate base stations at currently unauthorized locations. This action is taken to enable Phase I 220 MHz licensees to provide service within the geographic area they could serve pursuant to their initial applications, while accommodating those licensees that need to relocate their base stations for technical or other reasons.

DATES: Comments are due on or before September 13, 1995, and reply comments are due on or before September 18, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Martin Liebman, Wireless Telecommunications Bureau (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Fourth Notice of Proposed Rule Making* in PR Docket No. 89–552, and GN Docket No. 93–252, FCC 95–381, adopted August 28, 1995, and released August 29, 1995. The complete text of this *Fourth Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

Synopsis of Notice of Proposed Rule Making

1. In this *Fourth Notice of Proposed Rulemaking (220 MHz Fourth Notice),* the Commission seeks comment on proposed rules that will allow existing, *i.e.,* Phase I licensees in the 220 MHz service to seek minor modifications of their licenses to construct and operate base stations at currently unauthorized locations. The Commission proposes to define a minor modification for the 220 MHz service as any change in an existing licensee's authorized base station location such that, at the new station location, transmissions do not exceed a predicted field strength of 38 dBuV/m at the edge of the licensee's existing service area, and the Commission proposes to define the edge of a licensee's existing service area as the predicted 38 dBuV/m field strength contour resulting from transmissions from the licensee's currently authorized base station. The Commission's goal in proposing this licensing procedure is to enable Phase I 220 MHz licensees to provide service within the geographic area they could serve pursuant to their initial applications, while accommodating those licensees that need to relocate their base stations for technical or other reasons.

2. The Commission believes that most licensees will be able to locate alternative sites relatively close to their authorized site so that they will not be required to reduce their power or antenna height significantly. However, to enable 220 MHz licensees who desire to move greater distances from their authorized site to serve as much of their original area as possible, the Commission proposes to allow all licensees modifying their authorizations

to construct an unlimited number of additional, or ''fill-in'' base stations within their existing service area contour so long as the transmissions from these sites to not exceed the predicted field strength of 38 dBuV/m at the edge of their existing service area contour.

3. The Commission also proposes to allow those 220 MHz licensees that are situated in areas of the nation where signal levels could be affected by unusual terrain to move to alternate locations and operate at transmitter powers and antenna heights greater than would be allowed using Figure 10 of Section 73.699 of the Commission's Rules if they provide a technical showing, using established terrain models, to justify the use of higher powers and antenna heights.

4. The Commission modification proposal, if adopted, will permit 220 MHz licensees to obtain permanent authorization to operate at alternative locations. A number of 220 MHz licensees, however, have obtained Special Temporary Authority (STA) to allow them to operate stations temporarily at such locations. The Commission believes that those licensees who have obtained STAs and have constructed and are operating stations will be accommodated by its modification proposal. The Commission therefore proposes that licensees with STAs who seek permanent authorization at their STA site be required to comply with the Commission's modification proposal.

5. The Commission intends to adopt a Report and Order in this proceeding as soon as possible to set forth procedures for minor modification of 220 MHz licenses. Shortly thereafter, the Commission will open a filing window to allow applicants to file modification applications. Licensees will then obtain an authorization to construct a base station at their desired location and under their new operating parameters. The Commission proposes that this authorization, which replaces the licensees's existing authorization, will be the licensee's ''service area authorization'' and that thereafter the base station constructed under the service area authorization will be the licensee's ''primary base station.''

6. Although the Commission intends to grant applications for service area authorizations within a short time of their receipt, it is concerned that licensees obtaining such authorizations may not have sufficient time to construct their primary base stations by the December 31, 1995, construction and operation deadline. Therefore, for all licensees obtaining service area authorizations, the Commission will extend the deadline for the construction and operation of their primary base stations to a date 4 months after the grant of their service area authorization. Licensees not granted service area authorizations must still construct their currently authorized base stations and begin operation by December 31, 1995. Licensees obtaining service area authorizations may construct fill-in stations, but will be required to notify the Commission of their construction. The authority to operate fill-in stations will then be granted through minor modification of the licensee's service area authorization.

7. Finally, with the requirement, under our modification proposal, that the predicted field strength of transmissions from a licensee's primary base station not exceed 38 dBuV/m at the licensee's existing service area contour, the Commission is concerned that licensees obtaining service area authorizations could place into operation a primary base station of minimal power simply to meet their construction requirement. To prevent this from occurring, the Commission proposes to require licensees seeking service area authorizations to operate their primary base station at a power and antenna height that will result in the transmission of a predicted signal of 38 dBuV/m or more over at least 50 percent of the licensee's existing service area.

8. The Commission will require parties commenting on this proposal to file comments within 15 days of the release of this item and to file reply comments 5 days thereafter.

Administrative Matters

9. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 13, 1995, and reply comments on or before September 18, 1995. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554.

10. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules, *See generally* 47 CFR 1.1202, 1.1203, and 1,1206(a).

Initial Regulatory Flexibility Act Statement

I. Reason for Action

The action is taken to complete the implementation of the statutory and regulatory revisions applicable to the 220 MHz service by Congress in the Omnibus Budget Reconciliation Act of 1993 and by the Commission in several orders adopted in GN Docket No. 93–252 pertaining to a framework for the acceptance of initial or modification applications for the 220 MHz service.

II. Objectives of this Action

The Commission's primary goal is to establish a flexible regulatory scheme that will allow for more efficient licensing, eliminate unnecessary regulatory burdens on existing Phase I, non-nationwide licensees, and enhance the competitive potential of 220 MHz services in the mobile marketplace.

III. Legal Basis

The proposed action is authorized under Sections 4(i), 303(r), and 332 of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected

There are approximately 3,800 non-nationwide licensees authorized under Phase I licensing of the 220 MHz band. The potential impact of the proposals contained in this decision on small businesses is hard to predict without the benefit of comment, and the actual impact will depend on the final action taken. The intention of this action is to provide these Phase I non-nationwide licensees, which are authorized under site-specific licenses, with more flexibility with a minimum increased burden. The Commission, in drafting these proposals, has tried to balance the needs of all licensees and potential licensees. For example, to afford Phase I non-nationwide licensees increased flexibility to meet consumer demand and the ability to compete with future 220 MHz licensees and other CMRS licensees, licensees would be permitted to relocate a base station or construct fill-in stations anywhere within a service area to be defined by their existing 38 dBuV/m service contour, as long as the transmissions from the new sites do not extend beyond that contour.

As an example of proposed rules decreasing restrictions on these Phase I licensees, a licensee seeking to relocate within the newly defined service area would file a modification application to replace its existing site-specific authorization with a service area authorization that permits relocation on a permissive basis through minor modification of the service area authorization. Moreover, the existing deadline of December 31, 1995, imposed on Phase I licenses for the construction and operation of primary base stations will be extended to a date four months after the grant of the proposed service area authorization.

V. Reporting, Recordkeeping and Other Compliance Requirements

The Commission is proposing to generally decrease the burden on non-nationwide, Phase I licensees. A licensee would be able to replace its existing site-specific authority with an authorization that permits it to relocate authorized base stations or add fill-in base stations within an area to be defined by its existing 38 dBuV/m service contour through minor modification procedures. However, the licensee would be required to file a modification application during a filing window to be established upon the adoption of final rules in order to obtain the authorization to operate within the proposed service area. Also, the licensee would be required to notify the Commission of the construction of any fill-in stations.

VI. Federal Rules which Overlap, Duplicate, or Conflict with these Proposals

None.

VII. Significant Alternatives

The Commission believes that the modification licensing procedure proposed for non-nationwide Phase I licensees represents the best balance of providing them with the most flexibility and the least regulatory burden possible. It enables licensees to exchange their site-specific license for a broad, service-area license that permits them to move sites freely within the transmission area of the existing license through modification applications, while ensuring that transmissions do not extend to new geographic areas so as to require competing applications under initial application procedures.

11. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this *Fourth Notice of Proposed Rulemaking,* but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Fourth Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

12. Authority for issuance of this *Fourth Notice of Proposed Rulemaking* is contained in Sections 4(i), 303r, and 332 of the Communications Act of 1934 as amended; 47 U.S.C. 154(i), 303(r), and 332.

List of Subjects in 47 CFR Part 90

Business and industry, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22294 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding to list Silene verecunda ssp. verecunda (Mission Dolores Campion)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to list *Silene verecunda* ssp. *verecunda* (Mission Dolores Campion) pursuant to the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial data, the Service finds that listing this species is not warranted at this time. The known populations of *S. verecunda* ssp. *verecunda* are unlikely to be affected by toxic waste site studies and clean-up related to military base closure actions. The population status and vulnerability of *S. verecunda* ssp. *verecunda* to threats is unknown for the central part of its range including Montara Mountain in San Mateo County to Rancho del Oso in Santa Cruz County, California. The recent discovery of *S. verecunda* ssp. *verecunda* in chaparral and mixed evergreen plant communities indicates that this species may be more widely distributed and have broader habitat affinities than previously believed.

DATES: The finding announced in this document was made on July 24, 1995. Comments and materials regarding this petition finding may be submitted to the Field Supervisor at the address listed below until further notice.

ADDRESSES: Data, information, comments, or questions concerning this finding may be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. The petition finding, supporting data, comments, and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, staff biologist, at the above address or telephone 916/979–2120.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that after receiving a petition that is found to present substantial information indicating that the petitioned action may be warranted, the Service make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Such 12-month findings are to be published promptly in the **Federal Register**.

On May 29, 1991, the Service received a petition dated May 28, 1991, from Mr. Brian O'Neill, General Superintendent of the Golden Gate National Recreation Area (GGNRA), National Park Service, San Francisco, California, to emergency list five candidate plants including *Silene verecunda* ssp. *verecunda* (Mission Dolores Campion). The petition cited threats to this species that would result from military base closure activities on the Presidio in San Francisco, California. These activities included hazardous or toxic waste site studies and clean-up, and increased traffic and recreational activities. A 90-day finding was made by the Service that the petition presented substantial information indicating that the

requested action may be warranted. The 90-day finding was published in the **Federal Register** on August 19, 1992 (57 FR 37513). A status review was continued for this category 2 candidate species (58 FR 51186; September 30, 1993).

Silene verecunda ssp. *verecunda* is a perennial herb in the pink family (Caryophyllaceae) that grows from 10 to 70 centimeters (4 to 28 inches) tall. Each flower has five pink to rose colored notched petals, and the purplish sepals are united into a tube, making the flower look bell-shaped.

Silene verecunda ssp. *verecunda* previously was reported to occupy open grassy areas in sandy to rocky soils in coastal strand, coastal prairie, and coastal scrub plant communities ranging from San Francisco south to Santa Cruz County (Young 1979). Recently, *S. verecunda* ssp. *verecunda* has been reported to occur in chaparral and mixed evergreen forest plant communities (Skinner and Pavlik 1994; Lion Baumgartner, Thomas Reid Associates, *in litt.* 1994). Historical populations from Lake Merced and Mission Dolores in San Francisco have been extirpated due to commercial and residential development. Currently there are about 2,000 known individuals of *S. verecunda* ssp. *verecunda* found primarily on private or non-Federal land, including about 700 plants on San Bruno Mountain (Lion Baumgartner, *in litt.* 1994). Three populations, totaling seven hundred plants according to a 1993 census, occur on the Presidio in San Francisco. It is not known how much potential habitat, or numbers of individuals may occur from Montara Mountain in San Mateo County to Rancho Del Oso in Santa Cruz County.

The northern range of *Silene verecunda* ssp. *verecunda* overlaps a rapidly urbanizing portion of the San Francisco Bay area. Most of the habitat within the northern part of the range of *S. verecunda* ssp. *verecunda* has been disturbed or eliminated except for areas on San Bruno Mountain that are protected for the conservation of the endangered mission blue butterfly (*Icaricia icarioides missionensis*). Implementation of the San Bruno Mountain Habitat Conservation Plan (HCP) developed under sections 10(a)(1)(B) and 10(a)(2)(A) of the Act has conserved habitat for the butterfly, and indirectly benefits *S. verecunda* ssp. *verecunda* by maintaining the habitat in which both species occur. On federally owned land on the Presidio in San Francisco, increased human access and activities potentially threatened three populations of *S. verecunda* ssp. *verecunda*. One of these populations has been fenced to restrict access, and the other two populations are expected to be protected by fencing when ownership of the Presidio is transferred from the Department of Army to the National Park Service. Invasive non-native vegetation is encroaching on some populations of *S. verecunda* ssp. *verecunda.* On the Presidio, however, there are ongoing efforts to remove the invasive species. There is no quantitative trend data to assess the extent to which *S. verecunda* ssp. *verecunda* has or will be impacted by non-native plants. Therefore, such threat to this species is not known to be immediate or imminent. The known populations of *S. verecunda* ssp. *verecunda* that occur on the Presidio are unlikely to be affected by toxic waste site studies and clean-up. This species does not occur near the area where these activities most likely would occur (Peter Lacivita, U.S. Army Corps of Engineers, pers. comm. 1993). Neither disease, predation, or overutilization are known to be a threat to *S. verecunda* ssp. *verecunda*.

Stochastic (random) and natural events can cause population fluctuations or even population extirpations but are not usually a concern until the number of individuals or geographic distribution become vulnerably small. A combination of remnant small populations, a narrow range, and restricted habitat, could make all or a significant part of any population susceptible to destruction from stochastic natural events, such as flood, drought, disease, or other natural occurrences (Shaffer 1981, Primack 1993) such as genetics and reproductive success.

No demographic studies exist to indicate that the reproductive success of *Silene verecunda* ssp. *verecunda* is threatened, or is vulnerable to adverse impacts from random events. There is no evidence at this time to suggest that reproductive capacity is a factor posing a threat to the survival of the species. Low seed production in perennial plants is not necessarily a trait that makes a species vulnerable to extinction. Huenneke (1986) indicates that low genetic diversity in plants is rarely seen as a threat to their survival. Intrinsically, most rare plants are likely to have genetic systems enabling them to cope with the genetic consequences of rarity.

The population status of *S. verecunda* ssp. *verecunda* and its vulnerability to threats in the central part of its range (i.e., Montara Mountain in San Mateo County to Rancho del Oso in Santa Cruz County) are not known at this time. Moreover, the discovery of *S. verecunda* ssp. *verecunda* in chaparral and mixed evergreen plant communities is an indication that this taxon may be more widely distributed and have broader habitat affinities than previously believed. Chaparral covers an extensive portion of the Coast Ranges in the San Francisco Bay area. Consequently, the unknown overall status of the taxon makes any assumptions about vulnerability of *S. verecunda* ssp. *verecunda* to current threats unsupportable at this time.

The Service has reviewed the petition, other available literature and information, and consulted with biologists and researchers familiar with *Silene verecunda* ssp. *verecunda*. On the basis of the best scientific and commercial information available regarding *S. verecunda* ssp. *verecunda*, the Service finds that the petitioned action is not warranted at this time because there is insufficient information about the taxon's status and its vulnerability to threats. The Service will continue to maintain *S. verecunda* ssp. *verecunda* as a species of concern. The Service encourages all interested parties to investigate the population status of *S. verecunda* ssp. *verecunda* and its vulnerability to threats, with particular reference to the southern and central portions of its range and populations occurring in chaparral and mixed evergreen plant communities. If additional data becomes available in the future, the Service may reassess the listing priority for this species or the need for listing.

Author

The primary author of this document is Kirsten Tarp (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: July 24, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–22172 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List the Mohave Ground Squirrel as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the 90-day finding on a petition to list the Mohave ground squirrel (*Spermophilus mohavensis*) under the Endangered Species Act (Act) of 1973, as amended. The Service finds that the petition did not present substantial information indicating that the petitioned action may be warranted.

DATES: The finding announced in this document was made on August 4, 1995. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address listed below.

ADDRESSES: Information, data, comments, or questions concerning the status of the petitioned species should be submitted to the Field Supervisor, Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003. The complete file for this finding is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kate Symonds at the Ventura Field Office (see **ADDRESSES** section) or at 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to commence a review of the status of the species.

On December 13, 1993, the Service received a petition dated December 6, 1993, from Dr. Glenn R. Stewart of California Polytechnic State University, Pomona, California, requesting the Service to list the Mohave ground squirrel (*Spermophilus mohavensis*) as a threatened species. The species is a category 2 candidate (November 15, 1994; 59 FR 58988), which was first included in this category on September 18, 1985. Category 2 includes taxa for which sufficient information on biological vulnerability and threats is not currently available indicating that listing as endangered or threatened is warranted.

The Mohave ground squirrel ranges throughout the northwest portion of the Mojave Desert of California. The species spends about 7 months a year, usually from August to February, estivating in burrows. Timing of estivation is presumably related to sufficient accumulation of fat reserves (Bartholomew and Hudson 1960, Ingles 1965, Tomich 1982). Entrance into estivation may begin from June to September. In years with abundant food supplies, adults may enter estivation in late June and juveniles may enter in late July. Adults are more likely than juveniles to enter estivation early because adults do not need to gain as much weight as juveniles to survive the long estivation underground (Gustafson 1993). Males tend to enter estivation earlier than females because they do not need to put energy into milk production and feeding of young before they store fat (Leitner and Leitner 1992). Mating occurs soon after emergence from estivation and a litter of 4–6 young are born after a gestation period of 28–30 days. Mohave ground squirrels are generally less active when air temperatures drop below 88 °F or exceed 98.1 °F (Bartholomew and Hudson 1960). The diet consists of seeds, flowers, forbs, shrubs, grasses, fungi, and arthropods, although the species has demonstrated flexibility in utilizing food items as annual availabilities change (Recht 1977, Leitner and Leitner 1992).

Mohave ground squirrels have been found in all vegetation associations and up to 5,600 feet in elevation within its 7,600 square mile range (Hoyt 1972, Gustafson 1993). Gustafson (1993) reported that Mohave ground squirrels have been found in Holland's (1986) communities of Mohave wash scrub, desert sink scrub, and desert greasewood scrub. Nonetheless, the species appears to prefer large alluvial-filled valleys and deep, fine-to-medium textured soils vegetated with creosote bush scrub, shadscale scrub, or alkali sink scrub wherever desert pavement is absent (Aardahl and Roush 1985). The Mohave ground squirrel rarely is found in mountainous or rocky terrain, or dry lake beds, although exceptions have been recorded (Zembal and Gall 1980, Wessman 1977).

Excluding mountainous or rocky areas, and dry lake beds, the Mohave ground squirrel habitat is distributed over an estimated 7,200 square miles (Gustafson 1993). This figure excludes those plant communities and soil types in which the species has never been found. Without precise habitat information, it is difficult to assess the severity of habitat loss. In addition, insufficient data are available on specific habitat requirements to precisely delineate the acreage of Mohave ground squirrel habitat. Specific information on habitat requirements would also facilitate the rating of areas based on habitat quality.

In making a finding as to whether a petition presents substantial commercial and scientific information to indicate the petitioned action may be warranted, the Service must consider whether the petition is accompanied by a detailed narrative justification [50 CFR § 424.14(b)(2)(ii)]. The regulations require the Service to ''consider whether such petition * * * [p]rovides information regarding the status of the species over all or a significant portion of its range'' [50 CFR § 424.14(b)(2)(iii)], including current distributional and threat information. Furthermore, the Service is required to ''consider whether such petition * * * [i]s accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps'' [50 CFR § 424.14(b)(2)(iv)].

In assessing the substantiality of this petition, the Service reviewed several published and unpublished studies, agency documents, literature syntheses, commercial data, and field sighting records. The Service also interviewed researchers and other persons familiar with the species' biology. In addition, the petitioner was contacted to provide additional supporting information, which he was unable to provide. On the basis of the best scientific and commercial information available, the Service finds that the petition did not provide reliable data, recent or otherwise, throughout the species' range regarding specific habitat requirements, and population abundance and trends. Moreover, the petition did not include any data linking some activities (e.g., rural development, off-road vehicle use, Fort Irwin training) with long-term absence of the ground squirrel or on the extent to which these activities may be degrading habitat. Also, the petitioner failed to provide convincing data that grazing by domestic sheep and cattle adversely affects the habitat of the Mohave ground squirrel. Finally, the petition did not include any information to assess the extent and configuration of habitat loss due to fragmentation to determine whether this threatens the species. Therefore, given the uncertainties associated with urban growth and other threats in the Mojave

Desert, and the lack of credible studies on the biological status of the species, the Service finds that the petition did not present substantial information indicating that the listing of the Mohave ground squirrel may be warranted. Given these data uncertainties, the Mohave ground squirrel will remain a species of concern to the Service.

References Cited

A complete list of references used in the preparation of this finding is available, upon request, from the Ventura Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Kate Symonds, Ventura Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–22171 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Mono Lake Brine Shrimp as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Mono Lake brine shrimp (*Artemia monica*) under the Endangered Species Act of 1973, as amended (Act). This aquatic crustacean occurs only in Mono Lake, Mono County, California. A recent decision by the California State Water Resources Control Board to revise the water rights of the City of Los Angeles in the Mono Basin has apparently removed the threat of habitat degradation to the Mono Lake brine shrimp. As a result of the protections offered by this decision, the Service finds that the Mono Lake brine shrimp does not meet the definition of an endangered or a threatened species at the present time.

DATES: The finding announced in this document was made on July 24, 1995. Comments from all interested parties will be accepted until further notice.

ADDRESSES: Data, information, comments, or questions concerning this petition should be sent to the U.S. Fish and Wildlife Service, Field Supervisor, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Cathy R. Brown (see **ADDRESSES** section) telephone 805–644–1766; facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

In a petition dated June 16, 1987, and received by the Service on June 19, 1987, the Service was requested by Dr. Dennis D. Murphy, of the Center for Conservation Biology, Stanford University, to list the Mono Lake brine shrimp as an endangered species. The petition cited threats to this species that would result from increasing salinity caused by continued water diversions from the streams tributary to Mono Lake. The Service's 90-day finding, that substantial information existed indicating that the petitioned action may be warranted, was published in the **Federal Register** on August 19, 1988 (53 FR 31721). A status review was initiated at that time. A timely finding on the subject petition was precluded by higher priority listing actions until the present time.

The Mono Lake brine shrimp is a species of fairy shrimp found only in Mono Lake, Mono County, located east of the Sierra Nevada Mountain Range in northeastern California. It is a branchiopod crustacean in the order Anostraca whose members have stalked compound eyes. It is characterized by an elongated body trunk of 20 or more segments, and the absence of a carapace.

Mono Lake may be the second oldest continuously existing lake in North America with an estimated age ranging from 500,000 to one million years (Vorster 1985). It is a terminal lake, that is, a closed system with no outlet flows. Lake level is maintained by five principal inflowing streams that originate in the Sierra Nevada mountain range from meltwater of the previous winter's snowpack. When the net inflow is less than the net evaporation, salinity concentrations increase as the lake's surface elevation declines. Beginning in 1941, the City of Los Angeles Department of Water and Power (Los Angeles) diverted water from four of the five streams flowing into Mono Lake for its municipal and domestic use. The water exports have caused a decline of 14 meters (m) (45 feet (ft)) in lake surface elevation and a 100 percent increase in lake salinity (Dana and Lenz 1986). Mono Lake surface elevation was about 1,956 m (6,417 ft) above mean sea level and the water salinity was about 48 grams per liter (parts per thousand (ppt)) before water exports began in 1941 (Vorster 1985, Botkin *et al.* 1988). Currently, the lake surface elevation is about 1,943 m (6,375 ft) with a salinity of 100 ppt (M. Davis, Mono Lake Committee, pers. comm., 1994).

High salinities deleteriously affect Mono Lake brine shrimp reproduction. In addition, female age at reproduction increases significantly, and the number of ovoviviparous broods per year and brood size decrease significantly as salinity increases from 76 ppt to 118 ppt (Dana and Lenz 1986). Some of these negative effects on adult Mono Lake brine shrimp fecundity occur at present lake salinities. At the current salinity of about 100 ppt, about 50 percent of Mono Lake brine shrimp cysts do not hatch (Dana and Lenz 1986).

In September 1994, the California State Water Resources Control Board issued Water Rights Decision #1631, revising Los Angeles's water rights to provide greater protection to public trust values of Mono Lake. The State Board's decision establishes an average lake level of 1,948 m (6,392 ft), with an estimated salinity of 69 ppt. These conditions are expected to be beneficial to brine shrimp reproduction and should provide adequate protection for the long-term viability of the Mono Lake brine shrimp.

On the basis of the best available scientific and commercial information, the Service finds that listing the Mono Lake brine shrimp is not warranted because the taxon is not in danger of extinction or likely to become so in the foreseeable future. The Service will reclassify the Mono Lake brine shrimp as a category 3C candidate for listing and will continue to monitor its status. Category 3C candidates are those taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat. If information becomes available indicating that the

Mono Lake brine shrimp is threatened with extinction, the Service would reevaluate this decision.

References

A complete list of references used in the preparation of this finding is available upon request from the Ventura Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Cathy R. Brown, Ventura Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: July 24, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–22173 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[I.D. 083095A]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Extension of Allocations to Inshore and Offshore Components

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

ACTION: Notice of availability of fishery management plan amendments; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 38 to the Fishery Management Plan (FMP) for the Groundfish Fishery to the Bering Sea and Aleutian Islands Area and Amendment 40 to the FMP for Groundfish of the Gulf of Alaska. These amendments would extend through December 31, 1998, the authority to allocate pollock and Pacific cod for processing by the inshore and offshore components of the industry and continue the Western Alaska Community Development Quota (CDQ) program. This action is necessary to continue for an additional 3-year period the allocations of pollock and Pacific cod for processing by inshore and offshore components, as well as the CDQ program. The Council intends these amendments to promote management and conservation of groundfish, enhance stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries. Comments are requested from the public. Copies of the proposed FMP amendments may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the proposed amendments must be submitted by October 30,1995.

ADDRESSES: Comments on the proposed FMP amendments must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802–1668, Attention: Lori J. Gravel. Copies of the proposed amendments and the Environmental Assessment/ Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for the amendments may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon reviewing the plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the amendment.

Proposed Amendments 38 and 40 would extend through 1998 the provisions of Amendment 18 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 23 to the FMP for Groundfish of the Gulf of Alaska. Amendments 18 and 23 are scheduled to expire at the end of 1995. The Council voted unanimously at its June 1995 meeting to extend the provisions of the expiring Amendments 18 and 23 through December 31, 1998, under Amendments 38 and 40. The only significant change would be to move the western border of the Catcher Vessel Operational Area 30 minutes longitude to the east, from 168°00' to 167°30' W. long. The intent of the Council is to promote management and conservation of groundfish, enhance stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries during the period of time the Council is developing its comprehensive plan for improving the Alaska groundfish and crab fisheries.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendments. The proposed regulations are scheduled to be published within 15 days of this document's publication.

Dated: August 30, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22081 Filed 8–31–95; 4:34 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 173

Thursday, September 7, 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. 95–067–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Northrup King Company seeking a determination of nonregulated status for a corn line designated as Bt11 that has been genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn line presents a plant pest risk.

DATES: Written comments must be received on or before November 6, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–067–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–067–1. A copy of the petition and any comments received 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 access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnologist, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On July 14, 1995, APHIS received a petition (APHIS Petition No. 95–195–01p) from the Northrup King Company (Northrup King) of Golden Valley, MN, requesting a determination of nonregulated status under 7 CFR part 340 for an insect resistant corn line designated as Bt11. The Northrup King petition states that the subject corn line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, corn line Bt11 has been genetically engineered to contain the *cryIA(b)* gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk), which expresses a delta-endotoxin insecticidal protein known to be effective against certain lepidopteran insects, including European corn borer. Corn line Bt11 also contains the *pat* gene isolated from *Streptomyces viridochromogenes* that encodes a phosphinothricin-N-acetyl transferase (PAT) enzyme. When introduced into a plant cell, the PAT enzyme inactivates the herbicide glufosinate and is used in corn line Bt11 as a selective marker. Expression of the introduced genes is controlled by the 35S promoter derived from the plant pathogen cauliflower mosaic virus and a NOS terminator derived from the nopaline synthase gene of *Agrobacterium tumefaciens*.

Corn line Bt11 is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogenic sources. The subject corn line has been evaluated in field trials conducted since 1992 under permits or notifications issued by APHIS, and since 1993, field trials have also been conducted under an experimental use permit issued by the Environmental Protection Agency (EPA). In the process of reviewing the applications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

This genetically engineered corn line is also currently subject to regulation by other agencies. The EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation.

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*), pesticides added to raw agricultural commodities generally are

considered to be unsafe unless a tolerance or exemption from tolerance has been established. Foods containing unsafe pesticides are deemed to be adulterated. Residue tolerances for pesticides are established by EPA under the FFDCA; the Food and Drug Administration (FDA) enforces the tolerances set by EPA.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Northrup King's corn line Bt11 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 30th day of August 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–22129 Filed 9–6–95; 8:45 am]

BILLING CODE 3410–34–P

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AL–188—Centre Livestock Market, Inc. Centre, Alabama

GA–215—Calhoun Stockyard Highway 53, Inc. Calhoun, Georgia

MS–168—S & S Sales Mantachie, Mississippi

OR–126—Mike's Livestock Auction Eagle Point, Oregon

SC–152—L & H Auction Seneca, South Carolina

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408—South Building, U.S. Department of Agriculture, Washington, DC 20250 by September 14, 1995. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 30th day of August 1995.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division.

[FR Doc. 95–22111 Filed 9–6–95; 8:45 am]

BILLING CODE 3410–KD–P

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by Section 302(a). Notice was given to the stockyard owners and to the public as required by Section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
IL–174 Reel Livestock Center, Inc., Congerville, Illinois.	July 13, 1995.
MI–149 Rosebush Sale Barn, Rosebush, Michigan.	July 27, 1995.
MS–167 Sebastopol Livestock Association, Inc., Sebastopol, Mississippi..	July 13, 1995.
NC–168 Lyman Livestock, Chinquapin, North Carolina..	August 5, 1995.
OK–211 Prague Livestock Auction LLC, Prague, Oklahoma..	August 4, 1995.
PA–157 Smoketown Quality Dairy Sales Co., Lancaster, Pennsylvania..	July 6, 1995.

Done at Washington, DC, this 30th day of August 1995.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 95–22122 Filed 9–6–95; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 1995 rating year.

FOR FURTHER INFORMATION CONTACT: Mr. George Harbison, Personnel Division, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Washington DC 20425, (202) 376–8356.

Members

—Annie Blackwell, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor;

—Donald Tendick, Deputy Executive Director, Commodity Futures Trading Commission; and
—Paula Lettice, Director, Office of Budget and Program Execution, Office of Budget and Planning, U.S. Department of State.

Dated: September 1, 1995.

Miguel A. Sapp,

Acting Solicitor.

[FR Doc. 95–22212 Filed 9–6–95; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of Elkhorn Slough (CA), Hudson River (NY), ACE Basin (SC), and Tijuana River (CA) National Estuarine Research Reserve Programs.

These evaluations will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to Reserve management. Evaluation of National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Reserve Management Plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Elkhorn Slough National Estuarine Research Reserve, California site visit will be from November 13–17, 1995. A public meeting will be held on Wednesday, November 15, 1995, at 7:00 P.M., at the Elkhorn Slough Visitor Center, 1700 Elkhorn Road, Watsonville, CA 95076.

The Hudson River National Estuarine Research Reserve, New York site visit will be from November 13–17, 1995. A public meeting will be held on Thursday, November 16, 1995, at 7:00 P.M., at the New York State Department of Environmental Conservation Region 3 Office in New Paltz, NY.

The ACE Basin National Estuarine Research Reserve, South Carolina site visit will be from November 27 to December 1, 1995. A public meeting will be held on Thursday, November 30, 1995, at 7:00 P.M., at the Edisto Island Town Hall, 2414 Murray Street, Edisto Beach, SC.

The Tijuana River National Estuarine Research Reserve, California site visit will be from December 4–8, 1995. A public meeting will be held on Wednesday, December 6, 1995, at 7:00 P.M., at the Reserve Visitors Center, 301 Caspian Way, Imperial Beach, California.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, exit. 126.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: August 30, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone.

[FR Doc. 95–22127 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 082895C]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Surf Clam and Ocean Quahog Committee, and Demersal Species Committee jointly with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder Board will hold public meetings.

DATES: The meetings will be held on September 19–21, 1995.

ADDRESSES: The meetings will be held at the Radisson Hotel Philadelphia, 500 Stevens Drive, Lester, PA; telephone: 215–521–5900.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: On September 19, the Surf Clam and Ocean Quahog Committee will meet from 10:00 a.m. until noon. The Demersal Species Committee will meet jointly with the ASMFC Summer Flounder Board from 1:00 until 5:00 p.m. On September 20, the Council will meet from 8:00 a.m. until 4:00 p.m. On September 21, the Council will meet from 8:00 a.m. until approximately noon.

The purpose of these meetings is to review the surf clam and ocean quahog overfishing definitions and confirm the 1996 quota recommendations, discuss 1996 summer flounder management, prepare comments on Amendment 7 to the New England Council's Multispecies Plan, take Council action on 1996 quota recommendations for Atlantic mackerel, squid, and butterfish, and consider other fishery management matters.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at 302–674–2331 at least 5 days prior to the meeting dates.

Dated: August 30, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22083 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 082995B]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 976 (P5H)

SUMMARY: Notice is hereby given that Dr. Donald B. Siniff, University of Minnesota, 1987 Upper Buford Circle, St. Paul, MN 55108 has been issued a permit to take Antarctic seals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289).

SUPPLEMENTARY INFORMATION: On June 21, 1995, notice was published in the **Federal Register** (60 FR 32304) that a request for a scientific research permit to take Weddell seals (*Leptonychotes weddelli*), crabeater seal (*Lobodon carcinophagus*), leopard seal (*Hydrurga leptonyx*), Ross seal (*Ommatophoca rossii*), southern elephant seal, (*Mirounga leonina*), and Antarctic fur seal (*Arctocephalus gazella*) had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 29, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–22082 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–22–F

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

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

ACTION: Notice of Membership of NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of persons to serve as members of the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of these members to the NOAA PRB will be for periods of 24 months.

EFFECTIVE DATE: The effective date of service of appointees to the NOAA Performance Review Board is September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Rodney E. Markham, Senior Executive Service Program Manager, Human Resources Management Office, Office of Administration, NOAA, 1315 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0530 (ext. 195).

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the NOAA PRB (*NOAA officials unless otherwise identified*) are set forth below:

Carol Beaver: Chief, Aeronautical Charting Division, National Ocean Service
Hilda Diaz-Soltero: Science and Research Director, Northwest Region, National Marine Fisheries Service
David Evans: Senior Scientist, National Ocean Service
Nancy Foster: Deputy Assistant Administrator, National Marine Fisheries Service
Susan B. Fruchter: Counselor to the Under Secretary for Oceans and Atmosphere
Lois J. Gajdys: Chief, Management and Budget, National Weather Service
Margaret F. Hayes: Assistant General Counsel for Fisheries, Office of General Counsel
Walter J. Hussey: Director, Office of Systems Development National Environmental Satellite, Data and Information Service
David Jefferson: Chief, Information Systems Engineering Division (National Institute of Standards and Technology)
Eugenia Kalnay: Chief, Development Division, National Weather Service
Richard Kayser: Chief, Thermophysics Division, Chemical Science and Technology Laboratory (National Institute of Standards and Technology)
Katharine W. Kimball: Deputy Assistant Secretary, Office of the Assistant Secretary
Martha R. Lumpkin: Director, Central Center, Office of Administration
Ronald D. McPherson: Director, National Centers for Environmental Prediction, National Weather Service
George P. Murphy: Chief, Automation Division, National Weather Service
Ned A. Ostenso: Assistant Administrator, Office of Oceanic and Atmospheric Research
James L. Rassmussen: Director, Environmental Research Laboratories, Office of Oceanic and Atmospheric Research
P. Krishna Rao: Director, Office of Research and Applications, National Environmental Satellite, Data and Information Service
Kelly C. Sandy: Director, Western Center, Office of Administration
Alan R. Thomas: Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research
Michael F. Tillman: Science and Research Director, Southwest Region, National Marine Fisheries Service
Usha S. Varanasi: Science and Research Director, Northwest Region, National Marine Fisheries Service
John Williams: Director, Office of Technology Commercialization (National Institute of Standards and Technology)
Gregory W. Withee: Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service
Helen M. Wood: Director, Office of Satellite Data Processing and Distribution, National Environmental Satellite, Data and Information Service
Sally J. Yozell: Director, Office of Legislative Affairs
Susan F. Zevin: Deputy Assistant Administrator for Operations, National Weather Service

Dated: August 31, 1995.

Diana H. Josephson,

Deputy Under Secretary.

[FR Doc. 95–22137 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–12–P

[I.D. 081895C]

North Pacific Fishery Management Council; 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 (Council) and its advisory bodies will meet the week of September 25, 1995.

DATES: The meetings are scheduled as follows:

1. Advisory Panel (AP)—September 25 to September 29, 1995, 8:00 a.m. to 5:00 p.m.

2. Scientific and Statistical Committee (SSC)—September 25 to September 28, 1995, 8:00 a.m. to 5:00 p.m.

3. Council—September 27, 1995, 8:00 a.m., and expected to continue through October 2, 1995.

ADDRESSES: The AP and SSC will meet at the Quality Inn, 17001 Pacific

Highway South, Seattle, WA. The Council will meet at the Radisson Hotel, adjacent to the Quality Inn.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The agenda for the Council meeting will include the following subjects:

1. Oath of office to new Council appointees and election of Chairman and Vice Chairman of the Council.
2. Reports on domestic fisheries by the Alaska Department of Fish and Game and NMFS, enforcement reports from NMFS and the U.S. Coast Guard, report on international fishery issues, and a report on the status of Steller sea lions.
3. Status report on the Sablefish and Halibut Individual Fishing Quota (IFQ) program and review of several proposed changes to the plan.
4. Observer Oversight Committee report and review of observer program fee concerns, including staff report on proposals to address Council concerns.
5. Review of discussion papers on full utilization, improved retention and harvest priority, individual bycatch quotas, and rock sole seasonal apportionment.
6. Review of the License Limitation System to clarify issues and report on the status of proposed regulations, review of a work plan for a Bering Sea/Aleutian Islands (BSAI) pollock IFQ system, and report on the status of the moratorium on groundfish and crab fisheries.
7. Review of Council operations, including annual cycle for amendment proposals.
8. Review of pollock Community Development Quota (CDQ) applications for 1996–98, receipt of a status report from the State of Alaska on adding Akutan to the CDQ eligibility list, and consider establishing a CDQ Implementation Committee.
9. Review of status of stocks for crab fisheries and set time for a joint meeting of the Council and Alaska Board of Fisheries.
10. Status report on Amendment 1 to the Scallop Fishery Management Plan; possible emergency action to open federal waters in early 1996.
11. Review and approval of initial Gulf of Alaska and Bering Sea/Aleutian Islands (BSAI) stock assessment and fishery evaluation reports for 1996, and approval of initial 1996 groundfish and bycatch specifications for public review, including vessel incentive program rate standards and discard mortality rates for halibut.
12. Initial review of amendments for grid sorting of halibut; revisions to the Pacific ocean perch rebuilding plan, overfishing definitions and crab protection closure areas; a forage fish amendment, rock sole seasonal apportionments, and inseason flexibility to move crab prohibited species catch between BSAI Zones 1 and 2; and reauthorization of BSAI cod allocation by gear type.
13. Review of proposals received for amendments to the groundfish fishery management plans. Other groundfish issues to be discussed, time permitting, include: A report on a trawl mesh experiment, a NMFS report on frameworking inseason micro-management measures, and review of a draft proposed rule to require scale weight measurements of catch in the pollock fishery.

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 30, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22091 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 082495B]

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 Northern Habitat Panel will hold a public meeting.

DATES: The meeting will be held on September 14, beginning at 10:00 a.m.

ADDRESSES: The meeting will be held at the Natural Resource Building, 1111 Washington Street, SE, Room 571, Olympia, WA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon); telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss and act on regional habitat issues which merit consideration at this time.

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 30, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22090 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 083095D]

Marine Mammals and Endangered Species; Permits

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

ACTION: Issuance of scientific research permit no. 974 (P368F).

SUMMARY: Notice is hereby given that Mr. James Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039, has been issued a permit to take harbor seals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Gary Barone (301/713–2289).

SUPPLEMENTARY INFORMATION: On June 21, 1995, notice was published in the **Federal Register** that an application had been filed by the above-named individual. The requested permit has been issued, under the authority of the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 29, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–22190 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Governor's Innovative Programs, National Nonprofit Demonstration Programs, and Disability Demonstration Programs

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (the Corporation) announces the availability of up to $3,000,000 for Governor's Innovative Programs and National Nonprofit Demonstration Programs. The Corporation also announces the availability of up to $2,000,000 for AmeriCorps* Disability Demonstration Programs. This program should demonstrate ways to recruit and integrate individuals with disabilities in all aspects of AmeriCorps* programs. Under the National Nonprofit and Disability Demonstration Programs, organizations and qualified agencies can apply for grants to operate AmeriCorps* programs. Governors may apply for grants to operate AmeriCorps* or other innovative programs that engage Americans in community service to meet critical needs. The Corporation expects to make up to 20 grants. The grant size will vary by circumstance, program scope, and need. The Corporation does not anticipate making operating grants in excess of $300,000. This program is subject to the availability of funds.

DATES: Application materials will be available beginning on September 6, 1995. Deadline for submission of applications for the Governor's Demonstration Programs is November 7, 1995. Deadline for submission of applications for National Nonprofit Demonstration Programs is October 24, 1995. Deadline for the Disability Demonstration Programs is October 31, 1995. Applications for all three programs must be received at the Corporation by 3:30 p.m. Eastern Time, on the specified due date indicated for each program.

ADDRESSES: Applications must be submitted to: Corporation for National Service, 1201 New York Avenue NW, Washington, DC. 20525, Attention: Margaret Rosenberry. Applications may not be submitted by facsimile. This notice may be requested in an alternative format for the visually impaired by calling 202–606–5000, ext. 260.

FOR FURTHER INFORMATION CONTACT: To obtain application materials, contact the Corporation in writing or via facsimile at (202) 565–2786, Attention: Margaret Rosenberry. For further information, contact Margaret Rosenberry, Director of Planning and Program Development, at (202) 606–5000, ext. 154.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. Through their service, participants have direct and demonstrable impact on the nation's education, public safety, human, and environmental needs. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. Pursuant to the National and Community Service Act of 1990, as amended, the Corporation ''may undertake activities to * * * support innovative and model programs.'' 42 U.S.C. Sec. 12653(b).

Through these programs, the Corporation hopes to learn how it can provide more flexibility in program models and requirements without compromising program quality and without losing our emphasis on ''getting things done,'' strengthening communities, and developing participants. In general, the Corporation is accepting applications from national nonprofits, governors and state commissions, AmeriCorps* programs, and organizations working with persons with disabilities. The programs funded under these grants should encourage innovation, expand the universe of service models, and support service programs in a variety of settings.

Period of Support

Grants are made on an annual basis. Grantees may apply for second year support under AmeriCorps* or Subtitle H if funding is available. Renewal funding is not guaranteed and will be based on quality, successful performance, and availability of funds.

Eligible Applicants

For the Governor's Innovative Programs, the state commission on national service will serve as the legal applicant, and the governor may designate other state and/or local agencies or offices as partners in the effort. Although the commission serves as the grantee, the programs may not be operated by the commission itself. Instead, the programs must be operated by appropriate state or local government agencies, and nonprofit organizations, institutions of higher education, or Indian tribes. A letter from the governor which demonstrates support for the program both financially and programmatically is required for this application.

For National Nonprofit Demonstration Programs, only national nonprofit organizations that represent networks of youth or senior citizen-serving organizations, or those that promote and provide technical assistance to volunteer programs and networks are eligible to apply. The national nonprofit organization may apply to operate a demonstration in one, two or three sites. The term ''national nonprofit'' means any nonprofit organization whose mission, membership, activities, or constituencies are national in scope.

Existing AmeriCorps* State grantees funded, in part or in whole, as a competitive program (rather than with funds solely from the state formula) and their operating or project sites, state commissions, AmeriCorps* National grantees and their operating or project sites, Learn & Serve America Demonstration Programs that have AmeriCorps* Members, and organizations that work with the disability community and can provide technical assistance to AmeriCorps* programs, are eligible to apply for the Disability Demonstration Programs. If an applicant is working with existing AmeriCorps* program(s), a letter from the program(s) which demonstrates support and participation is required. Those AmeriCorps* State grantees that do not know whether they are competitive or formula programs should contact their state commission. The ineligibility of AmeriCorps* State grantees funded from the state formula to apply for Disability Demonstration Programs is pursuant to 42 U.S.C. § 12581(d)(5)(B).

Program Preferences and Priorities

The Corporation is seeking demonstration programs that enhance existing programming at the state and local level, and will provide new knowledge about effective service programming and its impact on schools, communities, Members/participants and institutions. Therefore, particular emphasis will be placed on programs

that can do one or more of the following:

1. Demonstrate new ways to link private businesses, foundations, and the public sector in joint service initiatives;

2. Enhance existing efforts and forge new partnerships with volunteer and community service programs;

3. Involve AmeriCorps* in recruiting, training, and supervising volunteers who receive no stipends;

4. Demonstrate ways to recruit and include persons with disabilities in all aspects of participation as AmeriCorps* Members;

5. Join youth and adults over age 55 to serve their communities together;

6. Operate in rural areas; and/or

7. Involve school-age youth in summer and school-year service-learning activities.

The specific priorities differ for each of the three Demonstration Program categories. The Corporation encourages applicants to develop focused programs and not to design programs to meet multiple priorities. Those applying for funds under the National Nonprofit Demonstration Program must meet community needs in the following areas:

1. Public Safety—especially violence against women and community policing;

2. Early Childhood Development—especially in health, school readiness, child care, parenting and needs of children ages 0–6;

3. Teen Pregnancy Prevention; or

4. After-school and Summer Childcare.

Under Governor's Innovative Programs, applicants may choose to meet needs identified by the governor or by the state commission on national and community service. Disability Demonstration Programs must meet the priorities established by the AmeriCorps* programs with which they will work and may add independent living to service activities.

Match Requirements

There are three basic requirements concerning program funding for all Demonstration Programs.

1. The Corporation share of the total cost of the program may not exceed 80%. The applicant may choose in which specific areas of the budget the 20% match will be made.

2. Each grantee must provide for its share of the cost of carrying out a funded program through a payment in non-federal cash and in-kind, and may provide for such share through state and local sources. At least 10% of the match must be cash.

3. The recipient of a grant may speed no more than 5% of the total grant funds on administrative costs. Additional administrative costs may be covered in the match.

Overview of Application Requirements

Application requirements will be set forth in detail in the application materials. Generally, all programs must comply with all applicable OMB circulars for grant management and with federal laws and regulations, including the supplementation, nonduplication and nondisplacement provisions set forth in 45 CFR 2506.2. Nonprofit organizations must comply with the independent audit requirements of OMB Circular A–133. The Corporation will provide copies of OMB circulars to applicants that do not have access to such materials.

Each applicant must submit one original and six (6) copies of the application package. The application must include all the forms and components listed in the instructions for the application. Applications must not exceed the page limitations specified for each section. Only 10 pages of appendices will be accepted (this includes annual reports, letters of support, and any supplementary material not specifically requested in the application.) Applications must be received at the Corporation by the relevant deadline date. Facsimiles will not be accepted.

Application Review

The Corporation is looking for high quality programs that are innovative and have the potential to be replicated. Applications are evaluated through a multi-stage process that includes reviews by peers and the Corporation staff. Decisions on semi-finalists will be made by the Corporation leadership, and semi-finalists may be asked to supply additional information and an implementation plan before final decisions are made. In addition, the Corporation may bring semi-finalists in for interviews. During the peer review process, the applications will be evaluated on the criteria listed below:

(1) Program Concept and Design (40%)

(2) Organizational Capacity (30%)

(3) Innovation and Ability to Advance the Field (20%)

(4) Cost-Effectiveness (10%).

In addition to the priorities set by the Corporation, the Corporation staff will, during the staff review process, also take into consideration diversity of geographic distribution and program model diversity in making its funding recommendations.

Dated: September 1, 1995.

Terry Russell,

General Counsel, Corporation for National and Community Service.

[FR Doc. 95–22197 Filed 9–6–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, 11 September 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: August 31, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22179 Filed 9–6–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group of Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 12 September 1995.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: August 31, 1995.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22180 Filed 9–6–95; 8:45 am]

BILLING CODE 5000–04–M

National Security Education Board Meeting

AGENCY: Office of the Assistant Secretary of Defense, Strategy and Requirements.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

DATE: October 30, 1995.

ADDRESS: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Edmond J. Collier, Deputy Director for External Affairs, National Security Education Program, 1101 Wilson Boulevard, suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: collier@nsep.policy.osd.mil

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: August 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22181 Filed 9–6–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Advisory Committee on Women in the Services (DACOWITS)

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92–463, as amended, notice is hereby given on a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of DACOWITS is to advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATES: October 12–15 (summarized agenda follows).

ADDRESS: Crowne Plaza Hotel, 100 North First Street, Phoenix, AZ 85004, (602) 257–1525.

AGENDA: Sessions will be conducted daily and will be open to the public. The agenda will include the following:

Wednesday, October 11, 1995

Conference registration (Conference Participants)
Meeting for Military Representatives
Meeting for Liaison Officers and DACOWITS Staff
Executive Committee Meeting
Plenary Session/Social (Paid Registered Conference Participants only)

Thursday, October 12, 1995

Continental Breakfast (Paid Registered Conference Participants only)
Opening Ceremony/General Business Session (Open to Public)
Lunch (current DACOWITS members, Military Representatives, Liaison Officers and staff)
Field Trip/Installation Visit (current DACOWITS members and Senior Military Representatives only)

Friday, October 13, 1995

Continental Breakfast (Paid Registered Conference Participants only)
Subcommittee sessions (Open to Public)
Lunch (Paid Registered Conference Participants only)
Subcommittee sessions Wrap-up (Open to Public)
OSD Reception and Dinner (By Invitation only)

Saturday, October 14, 1995

Sub-Committee Members Breakfast (current DACOWITS members and Military Representatives)
Sub-Committee Brief (current DACOWITS members and Military Representatives)
Lunch (Paid Registered Conference Participants only)
Executive Committee Mark Up

Sunday, October 15, 1995

Executive Committee Breakfast
Continental Breakfast (Paid Registered Conference Participants only)
Final Committee Meeting/Military Representatives review
Closing Session (Open to Public)

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Patricia F. Kersey, USAF or LCDR Tala J. Welch, USN DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, room 3D769, Washington, DC 20301–4000; Telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the OSD Reception and Dinner and Field Trip.

(2) The Opening Session/business session, all subcommittee sessions and the closing session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 6.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral presentations by members of the public will be permitted only on Sunday, October 15, 1995, before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office 1 copy of the presentation by October 10 and make 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS and Military Women Matters to consider.

(10) Members of the public will not be permitted to enter oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to ask questions to the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

(12) Non-social agenda events that are not open to the public are for administrative matters unrelated to substantive advice provided to the Department of Defense and do not involve DACOWITS deliberations or decision-making issues before the committee.

Dated: September 1, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22178 Filed 9–6–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers; Patents Available for Licensing

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, is extending the deadline for proposals for licensing (U.S. and foreign patents pending) technology concerning a concrete armor unit for protecting coastal structures and shoreline embankments from erosion caused by waves and currents. The availability of this technology for licensing was initially announced in the **Federal Register** on May 11, 1995 (Volume 60, No. 91, Page 25209). The deadline for proposals is being extended to allow interested parties more time to prepare proposals for an exclusive or partially exclusive license.

DATES: Proposals for an exclusive or partially exclusive license must be submitted by November 8, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Stewart, ATTN: CEWES–FV–T, (601) 634–4113, FAX (601) 634–4180, Internet stewarp@exl.wes.army.mil, or, for technical information, Mr. C.E. Chatham, ATTN: CEWES–CW, (601) 634–2460, FAX (601) 634–3433, Internet chatham@coafsl.wes.army.mil. U.S. Army Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199. Interested parties are also invited to visit the Waterways Experiment Station to observe this technology.

SUPPLEMENTARY INFORMATION: The initial announcement of the availability of this technology for licensing (**Federal Register** of May 11, 1995 (Volume 60, No. 91, Page 25209)) contains a detailed description of this technology and a listing of the criteria which will be used in evaluating proposals.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–22101 Filed 9–6–95; 8:45 am]

BILLING CODE 3710–08–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the Affordable Housing Advisory Board. The meeting is open to the public.

DATES: The Affordable Housing Advisory Board will hold its meeting on September 20, 1995, in Chicago, Illinois from 9 a.m. to noon and 1 to 4 p.m.

ADDRESSES: The meeting will be held at the Federal Deposit Insurance Corporation, 500 West Monroe Street, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, N.W., Washington, D.C. 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 14(b) of the Resolution Trust Corporation Completion Act, Public Law No. 103–204, established the Affordable Housing Advisory Board to advise the Thrift Depositor Protection Oversight Board (Oversight Board) and the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) on policies and programs related to the provision of affordable housing. The Board consists of the Secretary of Housing and Urban Development (HUD) or delegate; the Chairperson of the Board of Directors of the FDIC, or delegate; the Chairperson of the Oversight Board, or delegate; four persons appointed by the Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two former members of the National Housing Advisory Board. The Board's charter was issued March 9, 1994.

Agendas

A detailed agenda will be available at the meeting. Topics to be addressed include: the merger of the RTC and FDIC affordable housing programs, financing strategies and resources, selection of affordable housing assets, expansion of the Housing Opportunity Hotline and participation of community and nonprofit organizations in the affordable housing program. The Board's chair or its Designated Federal Officer may authorize a member or members of the public to address the Board during the public forum portion of the meeting. After all reports are given and comments are received from members of the public in attendance, the Board will develop its own recommendations.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the September 20 meeting. Seating is available on a first-come first-served basis for each session of the meeting.

Dated: September 1, 1995.

Jill Nevius,

Committee Management Officer.

[FR Doc. 95–22198 Filed 9–6–95; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Hearings

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of hearings.

SUMMARY: The National Assessment Governing Board (NAGB), U.S. Department of Education, is announcing three public hearings. These hearings will be conducted as part of the Council of Chief State School Officers' contract with NAGB for the purpose of developing an assessment framework and specifications for the National Assessment of Educational Progress (NAEP) in Civics. Public and private parties and organizations with an interest in civics education and assessment are invited to present written and oral testimony to the Council.

Each hearing will focus on the first draft of a framework for the national assessment of civics education for NAEP which will be given to a national sample of students in grades 4, 8, and 12. The results of the hearings are particularly important because they will provide broad public input in developing the civics education assessment framework to be used in the planned national NAEP examination. This assessment will measure American students' progress in civics education. These hearings are being conducted pursuant to Public Law 103–382 which states, ''The Board shall develop assessment objectives and specifications through a national consensus approach which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the general public.''

DATES: The dates of the three public hearings have been set as follows:

- October 25, 1995 in Washington, DC.
- November 10, 1995 in Chicago, Illinois.
- November 16, 1995 in Seattle, Washington.

The first hearing is scheduled from 10:00 to 2:00 pm and will be conducted in the Hall of States in the National Guard Memorial Building in Washington, DC. The second hearing will be held in conjunction with the National Council for the Social Studies Annual Convention in Chicago, Illinois from 9:30 am to 11:30 am in the Acapulco Room of the Hyatt Regency Hotel. The third and final hearing will be held in cooperation with the meeting of the National Assessment Governing Board from 2:30 pm to 5:00 pm in the Congress Room of the Four Seasons Hotel in Seattle, Washington. Persons desiring to present oral statements at any of these hearings shall submit a notice of intent to appear, postmarked no fewer than ten days (10) prior to the scheduled meeting date. The scheduling of oral presentations cannot be guaranteed for notices of intent received less than 10 days prior to the hearing.

Notices of Intent to present oral statements shall be mailed to: Council of Chief State School Officers, One Massachusetts Avenue NW., Suite 700, Washington, DC 20001–1431, Attn: Tiffanie Lee—Public Hearings.

Individuals are encouraged to request a copy of the draft framework, prepared by the NAEP Civics Education Consensus Project committees and staff. This document, which represents the project's first attempt at outlining the NAEP civics education assessment, will serve as the springboard for public comment and review. Requests for the draft framework may be made to Tiffanie Lee at the Council (address above), by phone to 202/336–7076, or fax to 202/789–0596.

LOCATIONS: For detailed information on the exact locations of all public hearings, please contact Council offices at (202) 336–7076.

WRITTEN STATEMENTS: Written statements may be submitted for the public record in lieu of oral testimony up to 30 days after each hearing. These statements should be sent directly to the Council (see aforementioned address) in the following format:

I. Issues and Questions Addressed

Testimony should respond to the content and layout of the draft civics education assessment framework, and the following questions:

1. Does the civics assessment framework combine feasibility and vision?

2. Does the framework contain appropriate expectations for students in grades 4, 8, and 12?

3. Is the design of NAEP civics education assessment appropriate for a large-scale national assessment?

4. Will this framework be useful to policymakers, educators, legislators, school board members and the public?

II. Summary

Briefly summarize the major points and recommendations presented in the testimony.

III. Discussion

The narrative should provide information, points of view and recommendations that will enable the Council to consider all factors relevant to the question(s) the testimony addresses. Respondents are encouraged to limit this section of their written statements to five (5) pages. The discussions may be appended with documents of any length providing further explanation. Written statements presented at each hearing will be accepted and incorporated into the public record. All written statements should follow the above format, as much as it is possible.

HEARINGS OBJECTIVES AND PROCEDURES: The Council seeks participation in the hearings from a broad spectrum of individuals and organizations in the sharing of opinions and recommendations regarding civics education proficiencies, knowledge, and those skills and strategies to be assessed at grade levels 4, 8, and 12. The list of speakers shall, on the one hand, provide a wide range of viewpoints and interests, but also be organized to respect the time constraints of the hearing schedule.

The goal of the hearings is to provide a medium for maximum input and guidance from teachers, curriculum specialists, policymakers, business and government representatives, civic and professional organizations, and concerned members of the general public. Following a brief introduction to the project by the Council of Chief State School Officers, the majority of each session will be devoted to presentations by scheduled speakers.

As listed in the **DATES** section above, speakers wishing to present statements shall file notices of intent. To assist the Council in appropriately scheduling speakers, the written notice of intent to present oral testimony should include the following information: (1) name, address and telephone number of each person to appear; (2) affiliation (in any); (3) a brief statement of the issues and/or concerns that will be addressed; and (4) whether a written statement will be submitted for the record.

Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Speakers should plan to limit their total remarks to no more than five (5) minutes. While it is anticipated that all persons will

have an opportunity to speak, time limits may not allow this to occur. The Council will make the final determination on selection and scheduling of speakers.

All written statements presented at the hearings will be accepted and incorporated into the public record. Written statements submitted in lieu of oral testimony should be received no later than 30 days after each hearing in order to be included in the public record. However, while written statements received after this date will be accepted, inclusion in the public record cannot be guaranteed.

A staff member from the Council of Chief State School Officers will preside at each of the hearings. The proceedings will be audio taped. The hearings can also be signed for the hearing-impaired, upon advance request.

ADDITIONAL INFORMATION: Additional information is available from the Council offices for anyone wishing to obtain more specifics on the assessment project. A draft assessment framework document will be made available to interested parties prior to the hearings in October and November. Individuals desiring additional information on a specific hearing should contact Council offices at (202) 336–7076.

STEPS AFTER HEARING: The Council will review and analyze all comments and opinions received in response to this announcement. A report of the outcomes of these hearings will be made available to the public upon request after January 1996.

The results of this public testimony, along with the Council's civics education consensus committee work, will be used to formulate recommendations for the NAEP Civics Education Assessment for the National Assessment Governing Board. The Board, charged with developing the assessment framework and specifications, will take final action on the Council's recommendations in the spring of 1996.

A record of all Council proceedings will be kept at the Council of Chief State School Officers until March 1996, at which time all records will be transferred to the National Assessment Governing Board, and will be available for public inspection.

Dated: August 31, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–22189 Filed 9–6–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Rapid Commercialization Initiative Announcement

AGENCY: Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Rapid Commercialization Initiative.

SUMMARY: The Rapid Commercialization Initiative (RCI) Announcement is being issued by the U. S. Department of Commerce, U. S. Department of Defense, Environmental Protection Agency, and the U. S. Department of Energy. The RCI is a component of the Administration's efforts to build cooperative interactions between the private sector, states, and federal agencies to advance a national environmental technology strategy and bring environmental technologies to market more rapidly and efficiently. The primary mission of the RCI is to identify and reduce the barriers that impede market entry of the four categories of environmental technologies—avoidance, monitoring and assessment, control, and remediation and restoration technologies—by facilitating and accelerating commercialization.

FOR FURTHER INFORMATION CONTACT: RCI Project Team, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telefax: (304) 285–4683.

SUPPLEMENTARY INFORMATION: RCI has two short-term goals. The first goal of RCI is to provide services to companies to address the three key barriers targeted in the Announcement: (1) Assistance in finding appropriate sites for demonstration/testing of near commercial environmental technologies; (2) assistance in verification of the performance and the cost of performance of RCI technologies; and (3) assistance in facilitating and expediting the issuance of permits. Proposers may request assistance in any one, two, or all three of the RCI services. Industry is invited and encouraged to propose innovative approaches that streamline activity, process, or reporting; save time; improve quality or safety; reduce cost; or eliminate duplication or overlap, to address any or all of the enumerated RCI services.

The second goal of RCI is to identify other important barriers, such as unpredictable commercialization pathways, improving market data, and streamlining regulations and processes to meet government mission program requirements. This information will be used for future consideration and planning relative to the long term goal of RCI to reduce these other barriers. Companies interested in applying for RCI assistance should request a copy of the Announcement which contains specific proposal preparation instructions. Proposal due date is September 28, 1995. Only written requests for the Announcement will be honored. Requests should be sent to the RCI Project Team, at telefax number (304) 285–4683. Letters requesting the solicitation should be addressed to the attention of the RCI Project Team, at the letterhead address and may reference number 95–32247.

Randolph L. Kesling,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 95–22216 Filed 9–6–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Alternative-Fuel Automotive Technician Training; Voluntary Certification Program

AGENCY: Department of Energy.

ACTION: Notice of TeleVideo Conference.

SUMMARY: The purpose of this notice is to facilitate participation by interested members of the public in a TeleVideo conference, co-presented by the U.S. Department of Energy (DOE), which will focus on the voluntary national certification program for private-sector alternative fuel vehicle training programs for automotive technicians.

DATES: The TeleVideo conference is scheduled for satellite broadcast on September 14, 1995 from 1:00 p.m. to 3:00 p.m. (Eastern Time).

ADDRESSES: The public can participate in the TeleVideo conference and obtain information on how to arrange a video conference receive site by calling Steve Husty, West Virginia University Network Coordinator at (304) 293–2867 ext. 424. On the day of the conference, questions may be called in to 1–800–265–6104 or FAXed to (304) 293–7541. Registration is free.

Satellite Information: Telestar 302, Transponder: 10V, Channel: 19 (Downlink frequency: 4080 MHz), Trouble number: 1–800–809–5465, Information: Jack Johns, (304) 293–4221.

FOR FURTHER INFORMATION CONTACT: Instructions on how to apply for certification of alternative fuel technician training programs may be obtained from the National Automotive Technician Education Foundation (NATEF) by calling (703) 713–0100, after September 14, 1995. For general

information on alternative fuels, contact the DOE National Alternative Fuels Hotline, 1–800–423–1DOE.

SUPPLEMENTARY INFORMATION: There is a national shortage of qualified technicians to service alternative fuel vehicles. This has spurred the need for high-quality technical training programs with uniform national standards. According to the Bureau of Labor Statistics, jobs for automotive technicians will increase 37% from 1990 to 2005. In order to alleviate the shortage, and pursuant to section 411 of the Energy Policy Act of 1992 (Pub. L. 102–486), DOE entered into a cost shared cooperative agreement with the National Automotive Technician Education Foundation to develop training program standards and implement a certification process for a voluntary national program. This program is referred to as the Certification of Higher-learning in Alternative Fuels Program (CHAMP). An explanation of the certification process, including how to obtain a certification, will take place during a TeleVideo conference, ''Alternative Fuel Vehicle Training: A Look At What's Coming Down The Road'', scheduled for satellite broadcast Thursday, September 14, 1995, from 1:00 p.m. to 3:00 p.m. (Eastern Time). It is presented by West Virginia University (WVU), the National Automotive Technician Education Foundation (NATEF), and DOE.

The broadcast will be interactive featuring a panel of leading alternative fuels industry and training experts. On the day of the conference, the toll-free number for questions by all participants nationwide for on-the-air responses by the panelists will be 1–800–265–6104.

Issued in Washington, DC, on September 6, 1995.

Brian Castelli,

Acting Assistant Secretary For Energy Efficiency and Renewable Energy.

[FR Doc. 95–22218 Filed 9–6–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG95–81–000, et al.]

LG&E Power Operating Services, Inc., et al. Electric Rate and Corporate Regulation Filings

August 31, 1995.

Take notice that the following filings have been made with the Commission:

1. LG&E Power Operating Services Inc.

[Docket No. EG95–81–000]

On August 18, 1995, LG&E Power Operating Services Inc. (''LPOS''), a California corporation with its principal place of business at 12500 Fair Lakes Circle, Suite 350, Fairfax, Virginia 22033–3822, 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.

LPOS intends to provide operating services for electrical generating facilities that are eligible facilities. Each of the eligible facilities that LPOS will operate are qualifying facilities with the exception of one pulverized coal-fired cogeneration facility with a maximum net power production capacity of between approximately 165 MW (summer) and 167 MW (winter). All of the facilities' electric power net of the facilities' operating electric power will be purchased at wholesale by public utilities.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Hudson Falls, LLC

[Docket No. EG95–85–000]

Hudson Falls, LLC (''HFLLC'') (c/o Jonathan W. Gottlieb, Reid & Priest LLP, 701 Pennsylvania Avenue, N.W., Suite 800, Washington, D.C. 20004) filed with the Federal Energy Regulatory Commission an application on August 21, 1995 for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

HFLLC is a limited liability company organized and in good standing under the laws of the state of New York which will own an interest in a hydroelectric generating facility located on the Hudson River in Saratoga and Washington Counties, New York. The New York Public Service Commission has determined that the facility will comply with the criteria set forth in Section 365.3(b) of the Commission's Regulations.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Adirondack Operating Services, LLC

[Docket No. EG95–86–000]

Adirondack Operating Services, LLC (''AOS'') (c/o Jonathan W. Gottlieb, Reid & Priest LLP, 701 Pennsylvania Avenue, N.W., Suite 800, Washington, D.C. 20004) filed with the Federal Energy Regulatory Commission an application on August 22, 1995, for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

AOS is a limited liability company organized and in good standing under the laws of the state of New York which will provide operation and maintenance services to a hydroelectric generating facility located on the Hudson River in Saratoga and Washington Counties, New York as well as other eligible facilities. The New York Public Service Commission has determined that the facility will comply with the criteria set forth in Section 365.3(b) of the Commission's Regulations.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Portland General Electric Company

[Docket No. ES95–39–000]

Take notice that on August 25, 1995, Portland General Electric Company filed an application under § 204 of the Federal Power Act seeking authorization to issue short-term debt securities, from time to time, aggregating not in excess of $200 million principal amount outstanding at any one time, during the period from November 1, 1995 through October 31, 1998, with final maturities not later than October 31, 1999.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22229 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–668–000]

CNG Transmission Corporation and Texas Eastern Transmission Corporation; Intent to Prepare an Environmental Assessment for the Proposed South Oakford Project and Request for Comments on Environmental Issues

August 31, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the South Oakford Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

CNG Transmission Corporation (CNG) and Texas Eastern Transmission Corporation (Texas Eastern) want to abandon by removal their Jeannette Compressor Station, to add compression at their South Oakford Compressor Station, to construct storage pipelines, and to install related facilities at the South Oakford Gate and the Earhart Gate, all in Westmoreland County, Pennsylvania. CNG and Texas Eastern request authorization to abandon:

- All buildings, parking lots, drive ways, equipment, piping, and 7,980 horsepower (hp) of compression at the Jeanette Compressor Station;
- A pig receiver near the Jeannette Compressor station;
- 75 feet of Line JP–40 within the Earhart Gate; and
- A 20-inch mainline gate setting for Line JP–250 at the Earhart Gate.

CNG and Texas Eastern request authorization to construct and operate:

- 10,000 hp of electric motor-driven compression at the South Oakford Compressor Station;
- A pig receiver and barrel dip at the Earhart Gate;
- 3,158 feet of 30-inch-diameter storage suction pipeline (Line JP–296) between the South Oakford Compressor Station and the South Oakford Gate;
- 3,158 feet of 20-inch-diameter storage discharge pipeline (Line JP–297) between the South Oakford Compressor Station and the South Oakford Gate; and
- Facilities to interconnect new Lines JP–296 and JP–297 to existing Lines JP–250 and JP–40, respectively, at the South Oakford Gate.

A nonjurisdictional West Penn Power owned and operated substation (100 feet by 100 feet) would be constructed at the South Oakford Compressor Station.

CNG and Texas Eastern want to construct the proposed facilities between May and November 1996. Removal of the abandoned facilities at the Jeannette Compressor Station would begin in the spring of 1997.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 10 acres of land, all of which is on existing right-of-way or on property owned by CNG and Texas Eastern. Construction of the pipelines would be entirely within existing rights-of-way, but would disturb about 6.5 acres. All land disturbance at the South Oakford and Earhart Gates, about 1 acre total, would be within the existing gate sites and pipeline rights-of-way. The new West Penn Power substation would be enclosed within the South Oakford Compressor Station by moving the existing fence to surround the new substation. This would add about 2.5 acres to the existing 5-acre fenced site.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternative to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified one issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by CNG and Texas Eastern: The addition of compression at the South Oakford Compressor Station may increase noise levels at nearby residences.

Keep in mind that this is a preliminary issue. Issues may be added, subtracted, or changed based on your comments and our analysis.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities off the South Oakford Compressor Station site. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the

[1] CNG Transmission Corporation and Texas Eastern Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, room 3104, 941 North Capitol Street NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426;
- Reference Docket No. CP95–668–000;
- Send a *copy* of your letter to: Ms. Jennifer Goggin, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St. NE., room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before September 28, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Goggin at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its fillings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene as stated in the Notice of Application issued on August 15, 1995, in this proceeding is September 5, 1995. Parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Jennifer Goggin, EA Project Manager, at (202) 208–2226.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22115 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 11550–000, et al.]

Hydroelectric Applications Walter Musa, Jr., et al.; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11550–000.

c. *Date filed:* July 3, 1995.

d. *Applicant:* Walter Musa, Jr.

e. *Name of Project:* Fly Creek.

f. *Location:* On Fly and Canyon Creeks, in Clark County Washington. Township 5N, Range 4E, Sections 4, 5, 9, 10.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Albert Liou, Harza Engineering, Inc., 2353 130th Avenue N.E., Suite 200, P.O. Box C–96900, Bellevue, WA 98005, (206) 882–2455.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* November 2, 1995.

k. *Description of Project:* The proposed project would consist of: (1) a 12-foot-high dam on Fly Creek; (2) a 17,000-foot-long, 4.5-foot-diameter penstock; (4) a powerhouse containing one generating unit with a capacity of 7,050 kW and an average annual generation of 25.9 GWh and discharging into Canyon Creek; and (5) a 1.5-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $350,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2a. *Type of Application:* New License.

b. *Project No.:* 2438–007.

c. *Date Filed:* November 5, 1993.

d. *Applicant:* Seneca Falls Power Corporation.

e. *Name of Project:* Waterloo and Seneca Falls Project.

f. *Location:* On the Seneca River in Seneca, Yates, Schuyler, and Ontario Counties, New York.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Patrick Oot, President, Seneca Falls Power Corporation, 4450 Swissvale Drive, Manlius, NY 13902–5224, (315) 637–4761.

i. *FERC Contact:* Thomas Dean (202) 219–2778.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The existing Waterloo and Seneca Falls Project consists of two developments that are 4.2 miles apart: the Waterloo Development and the Seneca Falls Development.

Waterloo Development

The Waterloo Development consists of: (1) a 16.5-foot-high, 306-foot-long dam (including the lock structure); (2) an impoundment with a surface area of 43,200 acres (including Seneca Lake) with a proposed usable storage capacity of 4,300 acre-feet and normal water surface elevations of 446.0 feet BCD (summer) and 445.0 feet BCD (winter); (3) an intake structure; (4) a powerhouse, which has three Francis turbines rated at 2,220 horsepower (hp) with a total hydraulic capacity of 1,650 cubic feet per second (cfs) connected directly to three generators with a total proposed generating capacity of 1.780 megawatts (MW); (5) a tailrace; (6) a 20-foot-long, 34.5 kV transmission line; and (7) appurtenant facilities.

Seneca Falls Development

The Seneca Falls Development consists of: (1) a 68-foot-high, 286-foot-long dam (including the lock structure and powerhouse intake structure); (2) an impoundment with a surface area of 135 acres with a proposed usable storage capacity of 65 acre-feet and normal water elevation of 430.5 feet BCD; (3) an intake structure that is integral with the dam; (4) a powerhouse, which has four Francis turbines that would be rated at 10,600 hp when refurbished with a total proposed hydraulic capacity of 2,480 cfs connected directly to four generators (one currently inoperable) with a total proposed generating capacity of 8.5 MW; (5) a tailrace; (6) a 300-foot-long, 34.5 kV transmission line; and (7) appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraph(s): A4 and D10.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Seneca Falls Power Corporation, 4450 Swissvale Drive, Manlius, NY 13104, or by calling Tod Nash at (315) 346–6232.

3a. *Types of Applications:* Transfer of Licenses. Partial Transfer of License.

b. *Project Numbers:* P–2019 and P–2699.

c. *Applicants:* Pacific Gas and Electric Company, Calaveras County Water District, Northern California Power Agency.

d. *Name of Projects:* Utica and Angels.

e. *Locations:* Utica: On the North Fork Stanislaus River, Silver Creek, and Beaver Creek in Calaveras and Tuolumne Counties, California. Angels: On Angels Creek in Calaveras County, California.

f. *Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant Contacts:* Ms. Annette Faraglia, Attorney, Law Department, Pacific Gas and Electric Company, 77 Beale Street, Room 3051, San Francisco, CA 94120–7442, (415) 973–7145; Mr. Steve Felte, General Manager, Calaveras County Water District, P.O. Box 846, San Andreas, CA 95249, (209) 754–3543, Mr. Hari Modi, Manager, Hydroelectric Project Development, Regulatory Compliance and Licensing, Northern California Power Agency, 180 Cirby Way, Roseville, CA 95678, (916) 781–3636.

h. *FERC Contact:* Dean C. Wight, (202) 219–2675.

i. *Comment Date:* October 16, 1995.

j. *Description of Proposed Actions:*

(1) Pacific Gas and Electric Company (PG&E) and Calaveras County Water District (CCWD) propose to transfer the licenses for both projects from PG&E to CCWD.

(2) CCWD and Northern California Power Agency (NCPA) propose to transfer a portion of the Utica license (P–2109) from CCWD to NCPA. The portion to be transferred consists of the Utica, Union, and Alpine Reservoirs and associated water rights.

k. *Related Actions:* NCPA has pending applications for new licenses in competition with PG&E's pending applications for relicense of both projects. See docket numbers P–2019–017 and P–11477–000 (Utica); P–2699–001 and P–11452–000 (Angels).

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4a. *Type of Application:* Amendment of License for Non-project Use of Project Lands.

b. *Project No:* 1951–036.

c. *Date Filed:* August 11, 1995.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Sinclair Project.

f. *Location:* Baldwin and Putnam Counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Mr. Larry Wall, Georgia Power Company, P.O. Box 4545, Atlanta, GA 30302, (404) 526–2054.

i. *FERC Contact:* Heather Campbell, (202) 219–3097.

j. *Comment Date:* October 16, 1995.

k. *Description of Project:* Georgia Power Company proposes to grant a permit to a developer and adjacent property owner for the purpose of dredging within project waters to increase navigability in the area of the property. A channel would be dredged in Lake Sinclair in order to allow small boat traffic to the future development of the Edgewater Point Estates Subdivision. The subdivision is located on the east shore of Lake Sinclair.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5a. *Type of Application:* New License for Minor Project.

b. *Project No.:* 1517–008.

c. *Date filed:* June 19, 1995.

d. *Applicant:* Monroe City Corporation.

e. *Name of Project:* Upper Monroe Hydroelectric Project.

f. *Location:* Partially within Fishlake National Forest, on Shingle Creek, Serviceberry Creek, and the First Lefthand Fork of the Monroe Creek, near the town of Monroe City, in Sevier County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a) - 825(r).

h. *Applicant Contact:* John Spendlove, Jones & DeMille Engineering, 45 East 500 North, Richfield, Utah 84701, (801) 896–8266.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Deadline for interventions and protests:* November 13, 1995.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The run-of-river project as licensed consists of: (1) a small diversion structure on each of the following three streams—First Lefthand Fork, Shingle Creek, and Serviceberry Creek; (2) an 11,200-foot-long penstock leading from the diversion structure on First Lefthand Fork to a powerhouse; (3) a 3,300-foot-long penstock leading from the diversion structure on Shingle Creek to a point on the First Lefthand Fork penstock 7,400 feet upstream from the powerhouse; (4) a 12,900-foot-long penstock leading from the diversion structure on Serviceberry Creek to a point on the First Lefthand Fork penstock 15 feet upstream from the powerhouse; (5) the powerhouse containing one generating unit with an installed capacity of 250 Kw; (6) a 1.65-mile-long transmission line; (7) a tailrace returning water to Monroe Creek; and (8) appurtenant facilities.

No new construction is planned.

m. This notice also consists of the following standard paragraphs: B1 and E1.

n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of Jones & DeMille Engineering (see address above).

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license

application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (October 24, 1995 for Project No. 2438–007). All reply comments must be filed with the Commission within 105 days from the date of this notice (December 8, 1995 for Project No. 2438–007).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005.

Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 31, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22114 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM96–1–118–000]

Arkansas Western Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1995.

Take notice that on August 28, 1995, Arkansas Western Pipeline Company (AWP) tendered for filing to become part of its FERC Gas Tariff First Revised Volume No. 1, First Revised Sheet No. 4, with a proposed effective date of October 1, 1995.

AWP states that the purpose of this filing is to implement for the first time an ACA charge in its rates. Specifically, AWP proposes to charge the FERC approved surcharge of $.0023 per Dth effective October 1, 1995 in accordance with Section 11 of the General Terms and Conditions of AWP's FERC Gas Tariff.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 8, 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 available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22116 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–88–000]

Black Marlin Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

August 31, 1995.

Take notice that on August 29, 1995, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective October 1, 1995:

Sixth Revised Sheet No. 4

Black Marlin states that the above-referenced tariff sheet is being filed pursuant to Section 18 of the General Terms and Conditions of Black Marlin's tariff to reflect the decrease of the ACA charge to 0.22¢/MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 8, 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. 95–22118 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA94–1–23–007]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1995.

Take notice that on August 29, 1995, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such revised tariff sheets bear various proposed effective dates as indicated thereon.

Eastern Shore states the instant filing is being submitted to comply with the Commission's order issued August 17, 1995 in Docket Nos. TA94–1–23–003, et al. The Commission's order approved Eastern Shore's Offer of Settlement (Settlement) as filed on June 19, 1995, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. More specifically, the filing is submitted in accordance with Articles I, II, and III of the Settlement.

Article I provides that, within fifteen days after the Commission approves the Settlement, Eastern Shore shall file revised Purchased Gas Adjustment (PGA) and Transportation Cost Adjustment (TCA) tariff sheets providing for: (1) The use of the unit-of-sales method to compute its (a) current demand and commodity adjustments, and (b) monthly deferred demand and commodity costs, and (2) the allocation of the demand costs to its firm sales customers based on a jurisdictional demand allocation factor calculated by dividing total jurisdictional customers' contract demands by the total of all customers' contract demands (i.e. jurisdictional and non-jurisdictional). These revised tariff sheets shall be made effective June 1, 1994.

Article II of the Settlement provides that Eastern Shore shall make cash refunds to its jurisdictional sales customers based on the changes in the PGA method described above. Refunds shall be computed from June 1, 1994 through June 30, 1995. Such period coincides with the end of the twelve-month deferral period which ends four months prior to the November 1, 1995 effective date of Eastern Shore's forthcoming annual PGA filing. Accordingly, Eastern Shore's Account No. 191 demand and commodity deferral balances shall be zeroed out as of June 30, 1995, thus eliminating the need for Eastern Shore to file for recovery of such balances in its annual PGA to be filed on or about September 1, 1995.

Article III provides that Eastern Shore shall file revised rate tariff sheets to be effective July 1, 1995. Such revised tariff sheets reflect a reduction of $0.9317 per Dt in Eastern Shore's jurisdictional contract demand sales rates. This reduction is accomplished by restating Eastern Shore's Base Tariff Rates to reflect an equivalent decrease. In addition, the restated Base Tariff Rates reflect Eastern Shore's cumulative PGA and TCA adjustments as filed in Docket No. TQ95–3–23–000. Such filing, accepted by the Commission on May 22, 1995, to be effective May 31, 1995, was

Eastern Shore's most recently approved filing prior to July 1, 1995.

Eastern Shore further states it is also filing revised rate tariff sheets necessary to reflect the implementation of the Settlement on its various filings made subsequent to July 1, 1995. Such filings include (1) Docket No. TF95–5–23–000, an interim PGA approved to be effective July 1, 1995; (2) Docket No. TQ95–4–23–000, a quarterly PGA filing approved to be effective August 1, 1995; (3) Docket No. TF95–6–23–000, an interim PGA filing approved to be effective August 1, 1995; and (4) Docket No. TM95–11–23–000, a tracking filing approved to be effective September 1, 1995.

Eastern Shore states it is currently in the process of finalizing its refund calculations and intends to make such refunds at its earliest opportunity, but in no event later than September 15, 1995. As directed by the Commission, Eastern Shore will file a refund report within thirty days of the refund distribution.

ESNG states that copies of the filing have been served upon its jurisdictional sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and Section 385.214). All such motions or protests should be filed on or before September 8, 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 to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22120 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–708–000]

El Paso Natural Gas Company; Notice of Application

August 31, 1995.

Take notice that on August 24, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978 filed an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a certification exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it seeks to abandon an exchange service authorized by an order issued February 13, 1978, as amended, in Docket Nos. CP77–604 and CP77–658. It is stated that such exchange service was provided in accordance with the provisions of a Gas Exchange Agreement dated February 3, 1977 (Exchange Agreement), as amended, between El Paso and Transwestern Pipeline Company (Transwestern). El Paso states that the Exchange Agreement comprises rate schedule X–12 of El Paso's FERC Gas Tariff, Third Revised Volume No. 2 and rate schedule X–1 to Transwestern's FERC Gas Tariff, Original Volume No. 2. El Paso states that it does not propose to abandon any facilities as a result of the proposed abandonment of exchange service.

El Paso states that by order issued July 27, 1995, at Docket No. CP95–70–000, et al., Transwestern has received permission and approval to abandon the exchange service.

It is asserted that the proposed abandonment is permitted by the present and future public convenience and necessity because the proposed abandonment will not result in or cause any interruption, reduction, or termination of firm natural gas service presently rendered by El Paso to any of its respective customers.

Upon receipt of the requested abandonment authorization, El Paso states that it will tender, pursuant to Part 154 of the Commission's Regulations, the appropriate filing to reflect the cancellation of rate schedule X–12 to El Paso's FERC Gas Tariff, Third Revised Volume No. 2. As required by ordering paragraph (B) of the Commission's July 27, 1995 order at Transwestern's Docket No. CP95–70–000, et al., Transwestern, on August 11, 1995 made a tariff filing in compliance with the abandonment authorization to cancel its rate schedule X–1.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 21, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22124 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–423–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1995.

Take notice that on August 29, 1995, Florida Gas Transmission Company (FGT), tendered for filing to become part of its FERC Gas Tariff, Third Revision Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 32
Original Sheet No. 32A

On December 30, 1994, FGT filed a Section 4 rate case filing (Rate Case) in Docket No. RP95–103–000, which, among other things, reflected revised service levels under Rate Schedules SFTS and NNTS, and certain tariff changes related to Rate Schedule NNTS. Subsequently, on March 23, 1995, the parties to the Rate Case proceeding agreed to an Interim Stipulation and Agreement (Interim S&A). Among other things, the Interim S&A provided that the revised service levels under Rate Schedules SFTS and NNTS and tariff changes related to Rate Schedule NNTS would become effective October 1, 1995.

In the instant filing, FGT is making tariff revisions to Rate Schedule NNTS as required by the Interim S&A. These revisions provide FGT's customers with increased flexibility for No-Notice Service. All of the proposed revisions relate to Rate Schedule NNTS customers' ability to request changes to NNTS service levels. Specifically, Section 3.A. of Rate Schedule NNTS is being revised to provide: (i) That, with respect to the initial three-year election option, FGT is not obligated to accept reductions to NNTS service quantities which would reduce the aggregate level of NNTS service quantities by more than 50 percent; and (ii) that shippers may also request changes to their NNTS service quantities annually, provided that FGT is not obligated to accept reductions, pursuant to the annual election option, to NNTS service quantities which would reduce the aggregate level of NNTS service subscribed. The tariff sheets filed herein are identical to Pro Forma Tariff Sheet Nos. 32 and 32A included in the Stipulation and Agreement filed August 24, 1995 (''August 24 S&A'') in Docket No. RP95–103.

The revised service levels under Rate Schedules SFTS and NNTS will become effective October 1, 1995. However, these changes do not require tariff revisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22121 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–113–000]

Gasdel Pipeline System, Inc.; Notice of Change in Annual Charge Adjustment

August 31, 1995.

Take notice that on August 29, 1995, Gasdel Pipeline System, Inc. (Gasdel) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1–A, Third Revised Sheet No. 5.

Gasdel states that the purpose of this filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1995 fiscal year. Gasdel requests that the Commission allow the tariff sheet to become effective October 1, 1995.

Gasdel states that copies of the filing have been mailed to all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person desiring 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. 95–22117 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–53–000]

Panhandle Eastern Pipe Line Company; Notice of Refund Report

August 31, 1995.

Take notice that on August 29, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing a Refund Report pursuant to the Commission's May 3, 1995, Order Granting Clarification (May 3, 1995 Order) issued in Docket No. RP95–124–001.

Panhandle states that it has returned through billing adjustments on certain customers' transportation invoices mailed July 12, 1995, $154,447.63, representing that portion of the Gas Research Institute surcharge associated with discounted capacity release transactions. Panhandle has included Appendix A to the filing which shows the amount refunded to each affected customer.

Panhandle states that copies of this filing have been served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 8, 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. 95–22123 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–80–000]

Tarpon Transmission Company; Notice of Change in Annual Charge Adjustment

August 31, 1995.

Take notice that on August 29, 1995, Tarpon Transmission Company (Tarpon) tendered for filing and acceptance the following tariff sheets to be a part of its FERC Gas Tariff, Original Volume No. 1:

Thirteenth Revised Sheet No. 2A
Third Revised Sheet No. 2E
Sixth Revised Sheet No. 86A
Eighth Revised Sheet No. 96A

Tarpon states that the purpose of this filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1995 fiscal year. Tarpon requests that the Commission allow the tariff sheets to become effective October 1, 1995.

Tarpon states that copies of the filing have been mailed to its customers and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person desiring 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. 95–22119 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–54–000]

Trunkline Gas Company; Notice of Refund Report

August 31, 1995.

Take notice that on August 29, 1995, Trunkline Gas Company (Trunkline) filed its report on refunds pursuant to the Commission's May 3, 1995, Order Granting Clarification issued in Gas Research Institute, 71 FERC ¶ 61,131 (1995).

Trunkline states that it has refunded through billing adjustments on certain customers' transportation invoices mailed July 10, 1995, in compliance with the Commission's May 3, 1995, Order in Docket No. RP95–124–001 related to the treatment of the Gas Research Institute (GRI) surcharge on discounted capacity release transactions during the period January 1, 1995 through May 31, 1995.

Trunkline states that copies of this filing have been served on all affected customers, applicable state regulatory agencies and GRI.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR385.211, 385.214. All such motions or protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22122 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66216; FRL 4974–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 6, 1995, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 37 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — Registrations With Pending Requests for Cancellation

Registration No.	Product Name	Chemical Name
000224–00029	Phillips Fuel Additive 55 MB-E	2-Methoxyethanol
000241–ID–985–0010	Cygon 400 Systemic Insecticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
000352–00447	Dupont Benlate 50 DF Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352–00534	Du Pont Accent Herbicide	2-(((((4,6-Dimethoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)-*N,N*-dimethyl-
000432–00741	Goldcrest Dulak II	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate 2,2-Dichlorovinyl dimethyl phosphate Xylene range aromatic solvent
000499–00068	Whitmire Fleas-Off for Dogs	Butoxypolypropylene glycol (Butylcarbityl) (6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone
000499–00153	Whitmire PT 515 Wasp-Freeze	Pine oil Pyrethrins Rotenone Cube Resins other than rotenone
000876–00280	Velsicol Technical Chlordane	Octachloro-4,7-methanotetrahydroindane
000876–00288	Technical Heptachlor (Export)	1,4,5,6,7,8,8-Heptachlorotetrahydro-4,7-methanoindene
001021–01157	Pyrocide Intermediate 7029	*N*-Octyl bicycloheptene dicarboximide

TABLE 1. — Registrations With Pending Requests for Cancellation—Continued

Registration No.	Product Name	Chemical Name
		(Butylcarbityl) (6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins 2,2-Dichlorovinyl dimethyl phosphate
001021–01365	Pyrocide Fogging Concentrate 7257	*N*-Octyl bicycloheptene dicarboximide (Butylcarbityl) (6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins 2,2-Dichlorovinyl dimethyl phosphate
001769–00152	Mint Aire Aerosol	1,2-Propanediol Triethylene glycol
001769–00241	National Chemsearch Sana-Cool	Hexahydro-1,3,5-tris(2-hydroxyethyl)-*s*-triazine
001769–00344	Fen-Two	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
004822–00124	Johnson Yard Master Foam Lawn Weed Killer	Monoethanolamine 3,6-dichloro-*o*-anisate Diethanolamine (2,4-dichlorophenoxy)acetate
005197–00040	Viro-Phene	Isopropanol 4-tert-Amylphenol *o*-Phenylphenol 1,2-Propanediol
005481–00126	Durham Malathion Sulfur Dust 4–25	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate Sulfur
005481–00245	Royal Brand Flea Dusting Powder	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
005481–00247	4% Malathion Dust with Sulphur	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate Sulfur
005481–00257	5% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
005481–00258	Royal Brand 4% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
005481–00269	Royal Brand Stored Grain Dust M-1	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
005481–00274	Malathion 25% Wettable Powder	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
005481–00298	Royal Brand Malathion 25 Dust Base	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
007969–00042	Basagran Manufacturers Concentrate	3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
007969–00054	Laddok Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
007969–00103	Prompt Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
009403–00010	Alken V-7	Potassium *N*-methyldithiocarbamate Disodium cyanodithioimidocarbonate
010370–00045	Ford's Durs-Vap Insecticide Concentrate	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate 2,2-Dichlorovinyl dimethyl phosphate
010370–00151	Ford's Dursban-DDVP 2.5 E.C.	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate 2,2-Dichlorovinyl dimethyl phosphate
010370–00164	Dursban-DDVP 1.25 E.C.	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate 2,2-Dichlorovinyl dimethyl phosphate
010370–00258	Crown Malvex Dry Fly Bait	2,2-Dichlorovinyl dimethyl phosphate
033649–00001	Dianon	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
034704–00636	Dichlobenil 50W	2,6-Dichlorobenzonitrile
034704–00637	Dichlobenil 10-G Aquatic Weed Killer	2,6-Dichlorobenzonitrile
053254–00004	Oxidan DCN/W Co-Blend	Sodium dichloroisocyanurate dihydrate
055947–00143	Barricade 65WG Herbicide In Water Soluble Packs	2,4-Dinitro-*N*3,*N*3-dipropyl-6-(trifluoromethyl)-1,3-benzenediamine (Note: *N*3 = *N*)

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. Two of the registrations for which voluntary

cancellation has been requested *000876–0280, Technical Chlordane; 000876–00288, Technical Heptachlor* are registrations granted by EPA to Velsicol Chemical Corporation in 1978 for ''export-only''; these particular registrations have never authorized sale or use in the United States. EPA does not believe that ''export-only'' registrations are appropriate under FIFRA, and intends to grant Velsicol's request for voluntary cancellation of these registrations thirty (30) days after publication of this notice. After the registrations are cancelled, EPA will permit continued exports of chlordane and heptachlor only if such exports are consistent with all the requirements of section 17 of FIFRA, including the labeling and purchaser-acknowledgement provisions of section 17(a). The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000224	Phillips 66 Co., 699 Adams Building, Bartlesville, OK 74004.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000432	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000499	Whitmire Research Laboratories, Inc., 3568 Tree Ct., Industrial Blvd., St Louis, MO 63122.
000876	Velsicol Chemical Corp., 10400 W. Higgins Rd., Suite 600, Rosemont, IL 60018.
001021	Mclaughlin Gormley King Co., 8810 Tenth Ave., North Minneapolis, MN 55427.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005197	Systems General, Inc., Box 152170, Irving, TX 75015.
005481	Amvac Chemical Corp., 4100 E. Washington Blvd, Los Angeles, CA 90023.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
009403	Alken-Murray Corp., 417 Canal Street, New York, NY 10013.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
033649	Nippon Kayaku Co., Ltd., c/o Nichimen America Inc., 1185 Ave. of The Americas, New York, NY 10036.
034704	Platta Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
053254	3V Inc., P. O. Drawer Y, Georgetown, SC 29442.
055947	Sandoz Agro Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

Cas No.	Chemical Name	EPA Company No.
53404–28–7	Dicamba, monoethanolamine salt	004822

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 6, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the

hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 24, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–22231 Filed 9–6–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66215A; FRL–4972–7]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice correction.

SUMMARY: In FR Doc. 95–18873 in the issue of the **Federal Register** of Wednesday, August 2, 1995, beginning in the third column on page 39388, make the following correction.

On page 39390, in the third column, seventeenth line from the top, the signature line which reads ''Frank Smith,'' is corrected to read, ''Frank Sanders,''.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St.,SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761. E-mail address: hollins.james@epamail.epa.gov.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 24, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–22232 Filed 9–6–95; 8:45 am]

BILLING CODE 6560–50–F

[AD–FRL–5292–9]

Control Techniques Guideline Document; Wood Furniture Finishing and Cleaning Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of draft control techniques guideline (CTG) document for public review.

SUMMARY: A draft CTG document for control of volatile organic compound (VOC) emissions from wood furniture finishing and cleaning operations is available for public review and comment. This information document has been prepared to assist States in analyzing and determining reasonably available control technology (RACT) for stationary sources of VOC emissions located within ozone national ambient air quality standard nonattainment areas. The draft document recommends RACT for industries included in, but not limited to, nine Standard Industrial Classification (SIC) codes: Wood Kitchen Cabinets (SIC 2434), Wood Household Furniture, except upholstered (SIC 2511), Wood Household Furniture, upholstered (SIC 2512), Wood Television, Radio, Phonograph, and Sewing Machine Cabinets (SIC 2517), Household Furniture Not Classified Elsewhere (SIC 2519), Wood Office Furniture (SIC 2521), Public Building and Related Furniture (SIC 2531), Wood Office and Store Fixtures (SIC 2541), and Furniture and Fixtures Not Elsewhere Classified (SIC 2599).

DATES: Comments must be received on or before November 6, 1995.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate and on computer disk, if possible) to Mr. Paul Almodóvar, (919) 541–0283, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Control Techniques Guideline. Copies of the draft CTG may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodóvar, (919) 541–0283, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The docket is available for public inspection at the Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, which is listed in the **ADDRESSES** section of this notice. The draft control technique guidelines document is also available on the Technology Transfer Network (TTN), on the EPA's electronic bulletin boards. This bulletin board provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed call the HELP line at (919) 541–5384.

I. Introduction

A. Background

Under the Clean Air Act (CAA), as amended in 1990, State implementation plans (SIP's) for ozone nonattainment areas must be revised to require RACT for control of VOC emissions from sources for which the EPA has already published a CTG or for which it will publish a CTG between the date the Amendments were enacted and the date an area achieves attainment status (CAA 182(b)(2)). The EPA has defined RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering the technological and economic feasibility'' (44 FR 53761, September 17, 1979).

The CTG's review current knowledge and data concerning the technology and costs of various emissions control techniques. The CTG's are intended to provide State and local air pollution authorities with an information base for proceeding with their own analyses of RACT to meet statutory requirements.

Each CTG contains a ''presumptive norm'' for RACT for a specific source category, based on the EPA's evaluation of the capabilities and problems general to the category. Where applicable, the EPA recommends that States adopt requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to obtain achievement of the national ambient air quality standards and the economic and

technical circumstances of the individual source.

This CTG addresses RACT for control of VOC emissions from wood furniture finishing and cleaning operations. The VOC emissions from wood furniture finishing, cleaning, and washoff operations are addressed. Many of the steps in these operations involve the use of organic solvents and are sources of VOC emissions. The sources, mechanisms, and control of these VOC emissions are described in the CTG.

The determination of presumptive RACT for the wood furniture industry was negotiated under the Federal Advisory Committee Act with members of industry, environmental groups, States, and local agencies. The regulatory negotiation was conducted in conjunction with the negotiation for the proposed national emission standards for hazardous air pollutants (NESHAP) for the wood furniture industry developed under Section 112(d) of the Act. This combined effort ensured that both sets of requirements are consistent and coordinated. The wood furniture industry NESHAP was proposed on December 6, 1994 (59 FR 62652), and is court ordered to be promulgated by November 15, 1995.

B. Solicitation of Comments

The EPA requests comments from the public on all aspects of the draft CTG, including the recommendations for RACT and the estimated cost of control.

II. Summary of Impacts

The EPA estimates that State and local regulations developed pursuant to this draft CTG would affect about 970 facilities and reduce VOC emissions by about 20,400 tons per year at a cost of about $20,200,000. Further information on costs and controls is presented in the draft CTG document.

III. Administrative 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 OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this draft CTG document is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This CTG document is not a ''rulemaking,'' rather it provides information to States to aid them in developing rules.

Dated: August 18, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–22089 Filed 9–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5293–2]

Approval of Categorical Sulfide Pretreatment Waiver for Uber Tanning Co. Discharging to City of Owatonna Subject to Pretreatment Standards Under 40 CFR Part 425

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The City of Owatonna (hereinafter referred to as ''Owatonna''), Minnesota operates a publicly owned treatment works (POTW) which accepts wastewater from Uber Tanning Company, which is subject to pretreatment standards at 40 CFR part 425. Pursuant to 40 CFR 425.04(c), Owatonna certified to the U.S. Environmental Protection Agency (U.S. EPA) on June 28, 1995, that discharge of sulfide from the tannery would not interfere with the operation of the POTW. Pursuant to 40 CFR 425.04(c) Owatonna provided documentation to the U.S. EPA on August 14, 1995, of notice that presents the findings supporting this determination published in the local newspaper with the largest circulation and notice of opportunity for public hearing.

Pursuant to 40 CFR 425.04(c) and in consideration of the information provided by Owatonna, I hereby, waive the sulfide pretreatment standards at 40 CFR part 425 for Uber Tanning Company in Owatonna, Minnesota.

DATES: This action is effective as of September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Morris Beaton, Permits Section, Water Quality Branch, U.S. EPA, Region 5, at (312) 353–0850.

Jo Lynn Traub,

Director, Water Division.

[FR Doc. 95–22084 Filed 9–6–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

CNB 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 29, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. CNB Bancorp, Inc., Woodsfield, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank of Woodsfield, Woodsfield, Ohio.

2. F&A Financial Company, Kittanning, Pennsylvania; to acquire up to 95.9 percent of the voting shares of Snyder Holding Company, Kittanning, Pennsylvania, and thereby indirectly acquire The Farmers National Bank of Kittanning, Kittanning, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303:

1. Home Savings Bank Employee Stock Ownership Plan, Meridian, Mississippi; to become a bank holding company by acquiring 35.81 percent of the voting shares of Home Savings Bank, SSB, Meridian, Mississippi.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Harrell Bancshares, Inc., Camden, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of South Arkansas, Junction City, Arkansas, and Calhoun County Bank, Hampton, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mille Lacs Bancorporation, Inc., Onamia, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Mille Lacs Bancshares, Inc., Onamia, Minnesota, and thereby indirectly acquire First State Bank of Onamia, Onamia, Minnesota.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Aspen Bancshares, Inc., Aspen, Colorado; to acquire 100 percent of the voting shares of Val Cor Bancorporation, Inc., Cortez, Colorado, and thereby indirectly acquire Valley National Bank, Cortez, Colorado.

2. First National Bancshares, Inc. ESOP and 401(k) Trusts, Goodland, Kansas; to become a bank holding company by acquiring 35 percent of the voting shares of First National Bancshares, Inc., Goodland, Kansas, and thereby acquire First National Bank, Goodland, Kansas.

Board of Governors of the Federal Reserve System, August 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22205 Filed 9–6–95; 8:45 am]

BILLING CODE 6210–01–F

First Midwest 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 20, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Midwest Bancorp, Inc., Naperville, Illinois; to acquire 100 percent of the voting shares of CF Bancorp, Inc., Davenport, Iowa a savings and loan holding company, and thereby indirectly acquire Citizens Federal Savings Bank, F.S.B., Davenport, Iowa (Citizens), and thereby engage in owning, controlling, or operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Citizens may convert to a national bank upon consummation of the proposal. Applicant also has applied to acquire Citizens Service Corporation, Davenport, Iowa, and thereby engage in making, acquiring, or servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Citizens Federal Insurance Agency, Davenport, Iowa, and thereby engage in providing securities brokerage services, pursuant to § 225.25(b)(15) of the Board's Regulation Y and the sale of credit insurance on consumer loans, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22208 Filed 9–6–95; 8:45 am]

BILLING CODE 6210–01–F

Independence Bancorp, Inc., et al.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice 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 the notice or to the offices of the Board of Governors. Comments must be received not later than September 20, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Independence Bancorp, Inc. Employee Stock Ownership Plan, Ramsey, New Jersey; to acquire 23.3 percent of the voting shares of Independence Bancorp, Inc., Ramsey, New Jersey, and thereby indirectly acquire Independence Bank of New Jersey, Ramsey, New Jersey.

Board of Governors of the Federal Reserve System, August 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22207 Filed 9–6–95; 8:45 am]

BILLING CODE 6210–01–F

MidWest Bancorporation, Inc.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice 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 the notice or to the offices of the Board of Governors. Comments 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. MidWest Bancorporation, Inc., Minnetonka, Minnesota, and Todd County Agency, Inc., Minnetonka, Minnesota; to acquire West Central Agency, Inc., Graceville, Minnesota, and thereby acquire certain assets from Graceville Insurance Agency, Graceville, Minnesota, and thereby engage in general insurance agency activities in a place with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. The geographic scope for these activities is the Minnesota communities of Barrett, Bertha, Elbow Lake, Graceville, Verndale, and Wheaton, each of which has a population of less than 5,000.

Board of Governors of the Federal Reserve System, August 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22206 Filed 9–6–95; 8:45 am]

BILLING CODE 6210–01–F

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 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: Family Preservation and Family Services (FP/FS) Support Act.

OMB No.: New.

Description: Participants in the implementation of the Family Preservation and Family Support Services Program will provide information for reauthorization of Title IV–B, subpart 2 of the Social Security Act and provide feedback to ACF necessary to determine the need for future policy guidance and refine the nature and scope of technical assistance.

Respondents: State, Local and Tribal government.

Title	No. of respondents	No. of responses per respondents	Average burden per response	Burden
Traditional Child Welfare Staff	40	1	2.00	19.90
FP/FS Coordinator	10	1	1.00	10.00
FP/FS Stakeholders	80	1	8.00	80.00
Family Preservation Staff	10	1	0.75	7.50
Family Support Staff	10	1	1.00	10.00
Estimated Total Annual Burden Hours:				127.5

Dated: August 30, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–22079 Filed 9–6–95; 8:45 am]

BILLING CODE 4184–01–M

[Program Announcement No. 93612–961]

Administration for Native Americans; Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families, (ACF).

ACTION: Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiian, Alaska Natives and Native American Pacific Islanders.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1996 funds in four competitive areas:

(1) Governance and social and economic development;

(2) Governance and social and economic development for Alaska Native entities;

(3) Environmental regulatory enhancement; and

(4) Native American languages preservation and enhancement.

Financial assistance provided by ANA in support of projects in these four areas is intended to promote the goal of self-sufficiency for Native Americans.

APPLICATION KIT: Application kits, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F,

Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201–0001, Attention: 93612–961, Telephone: (202) 690–7776.

SUPPLEMENTARY INFORMATION:

Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1996 funds, authorized under the Native American Programs Act (Act), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders in four competitive areas.

In order to streamline the application process for eligible applicants under four competitive areas, ANA is issuing a single program announcement for fiscal year 1996 funds. Therefore, information regarding ANA's mission, policy, goals, application requirements, review criteria and closing dates for each competitive area is included in this comprehensive announcement.

In previous years, the Administration for Native Americans promoted the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects. Amendments to the Native American Programs Act have expanded ANA's granting authority to establish two additional programs for 1) environmental regulatory enhancement, and 2) Native American languages preservation and enhancement.

Funding authorization is provided under sections [803(a), 803(d) and 803C of the Native American Programs Act of 1974, as amended (Pub. L. 93–644, 88 Stat. 2324, 42 U.S.C. 2991b).]

The Indian Environmental Regulatory Enhancement Act of 1990 (Pub. L. *101–408*) authorizes financial assistance for projects to address environmental regulatory concerns (Section 803(d) of the Native American Programs Act of 1974, as amended).

The Native American Languages Act of 1992 (Pub. L. *102–524*) authorizes financial assistance for projects to promote the survival and continuing vitality of Native American languages (Section 803C of the Native American Programs Act of 1974, as amended).

This program announcement is being issued in anticipation of the appropriation of funds for fiscal year 1996 and the availability of funds for the four competitive areas is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented under each competitive area in this announcement.

Eligible applicants may compete for and receive a grant award in each of the three competitive areas (An Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the same closing date.) However, ANA continues its policy that an applicant may only submit one application per competitive area.

This program announcement consists of three parts.

Part I ANA Policy and Goals

Provides general information about ANA's policies and goals for the four competitive areas.

Part II ANA Competitive Areas

Describes the four competitive areas under which ANA is requesting applications:

- Governance, Social and Economic Development (SEDS);
- Governance, Social and Economic Development (SEDS) for Alaska Native entities;
- Environmental Regulatory Enhancement; and
- Native American Languages Preservation and Enhancement.

Each competitive area includes the following sections which provide area-specific information to be used to develop an application for ANA funds:

A Purpose and Availability of Funds;
B Background;
C Proposed Projects to be Funded;
D Eligible Applicants;
E Grantee Share of the Project;
F Review Criteria;
G Application Due Date(s); and
H Contacts to Obtain Further Information

Part III General Application Information and Guidance

Provides important information and guidance that applies to all four competitive areas and that must be taken into account in developing an application for any of the four areas.

Part I—ANA Policy and Goals

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. *Governance:* To assist tribal and Alaska Native village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

2. *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being.

3. *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

The Administration for Native Americans assists eligible applicants for the four competitive areas to undertake one to three year development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency.

For each type of project, applicants must describe a concrete locally-determined strategy to carry out a proposed project with fundable objectives and activities.

Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community.

An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority

to submit an application under that specific competitive area for the duration of the approved grant period.

Note: If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

Part II—ANA Competitive Areas

The four competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, requirements, and review criteria. However, most of the requirements are standard for all applications to be submitted under this program announcement. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

An applicant may submit a separate application under any of the competitive areas described in this Part, as long as the applicant meets the eligibility requirements that are listed separately under each area. Applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2. An Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the same closing date.

ANA Competitive Area 1. Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1996 financial assistance to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through locally developed social and economic development strategies (SEDS).

Approximately $14 million of financial assistance is anticipated to be available under this priority area for governance, social and economic development projects. In fiscal year 1996, ANA anticipates awarding approximately 120 competitive grants ranging from $30,000 to $1,000,000 under this competitive area.

B. Background

To achieve its goals, ANA supports tribal and village governments, and Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

ANA's SEDS policy is based on the use of the following definitions:

- ''Governmental infrastructure'' includes the constitutional, legal, and administrative development requisite for independent governance.
- ''Economic infrastructure'' includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- ''Social infrastructure'' includes those components through which health, economic well-being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services.

Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

In discussing their community-based, long-range goals, and the objectives for the proposed projects, ANA recommends that non-Federally recognized and off-reservation groups include a description of what constitutes their specific community.

ANA encourages the development and maintenance of comprehensive strategic plans which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

C. Proposed Projects to be Funded

This section provides descriptions of activities which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the governance, social and economic development needs of the local community and should be consistent and supportive of the proposed project objectives.

The types of projects which ANA may fund include, but are not limited to, the following:

Governance

- Improvements in the governmental, judicial and/or administrative infrastructures of tribal and village governments (such as strengthening or streamlining management procedures or the development of tribal court systems);
- Increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning);
- Increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, executive orders, administrative and court decisions, or as citizens of a particular state, territory, or of the United States.
- Status clarification activities for Native groups seeking Federal or State tribal recognition, such as performing research or any other function necessary to submit a petition for Federal acknowledgement or in response to any obvious deficiencies cited by the Bureau

of Acknowledgement and Research (BAR), Department of Interior, in a petition from a Native group seeking Federal recognition; and

- Development of and/or amendments to tribal constitutions, court procedures and functions, by-laws or codes, and council or executive branch duties and functions.

Economic Development

- Development of a community economic infrastructure that will result in businesses, jobs, and an economic support structure.
- Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, light and/or heavy manufacturing, construction, housing and fisheries or aquaculture;
- Stabilizing and diversifying a Native community's economic base through business development ventures;
- Creation of microenterprises or private sector development;
- Establishment or expansion of businesses and jobs that utilize Indian tax incentives passed in the Omnibus Budget Reconciliation Act of 1993; and

Social Development

- Enhancing tribal capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;
- Developing local and intertribal models related to comprehensive planning and delivery of services;
- Developing programs or activities to preserve and enhance tribal heritage and culture; and
- Establishing programs which involve extended families or tribal societies in activities that strengthen cultural identity and promote community development or self-esteem.

D. Eligible Applicants

Current ANA SEDS grantees whose project period terminates in fiscal year 1996 (October 1, 1995-September 30, 1996) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the ''Financial Assistance Award'' document).

Additionally, provided they are not current ANA SEDS grantees, the following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and
- Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Note: Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. (The total approved cost of the project is the sum of the ACF share and the non-Federal share.) The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as ''the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.''

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Note: Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and

program goals (described in the Background section of this competitive area), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community you serve will determine the type of documentation necessary.

For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should define their membership and describe how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.
- ''Letters and other documents of commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant states that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

(2) Organizational Capabilities and Qualifications. (10 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (45 Points)

The application proposes specific project Objective Work Plans with activities related to each specific objective.

The Objective Work Plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate

the determination of cost allowability and the relevance of these costs to the proposed project; and

• Requests funds which are appropriate and necessary for the scope of the proposed project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

Note: Applicants from the Native American Pacific Islands are exempt from the $200,000 non-Federal share requirement.

G. Application Due Date

The closing dates for submission of applications under this competitive area are: October 20, 1995, February 9, 1996, and May 17, 1996.

H. For Further Information Contact

Sharon McCully (202) 690–5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, S.W., Room 348–F, Washington, D.C. 20201–0001

Competitive Area 2. Alaska-Specific Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1996 funds for Alaska Native social and economic development projects. Approximately $1.5 million of financial assistance is anticipated to be available under this competitive area for Alaska Native governance, social and economic development projects.

ANA plans to award approximately 15–18 grants under this competitive area. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period of 12 months will be up to $150,000, commensurate with approved multi-village objectives.

B. Background

Based on the three ANA goals described in Part I, ANA implemented a special Alaska social and economic development initiative in fiscal year 1984. This special effort was designed to provide financial assistance at the village level or for village-specific projects aimed at improving a village's governance capabilities and for social and economic development.

This competitive area continues to implement this special initiative. ANA believes both the nonprofit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. However, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

C. Proposed Projects to be Funded

Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

Governance

• Initiate demonstration programs at the regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base;

• Assist villages in developing land use capabilities and skills in the areas of land and natural resource management and protection, resource assessment and conducting environmental impact studies;

• Assist village consortia in the development of tribal constitutions, ordinances, codes and tribal court systems;

• Develop agreements between the State and villages that transfer programs jurisdictions, and /or control to Native entities;

• Strengthen village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate;

• Assist in status clarification activities;

• Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health, well being and culture of a community and its people;

• Strengthen local governance capabilities through the development of village consortia and regional IRAs (Indian Reorganization Act councils organized under the Indian Reorganization Act, 25 U.S.C. 473a);

• Assist villages in preparing and coordinating plans for the development and/or improvement of water and sewer systems within the village boundaries;

• Assist villages in establishing initiatives through which youth may participate in the governance of the community and be trained to assume leadership roles in village governments; and

• Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills or earthquakes.

Economic Development

• Assist villages in developing businesses and industries which: 1) use local materials; 2) create jobs for Alaska Natives; 3) are capable of high productivity at a small scale of operation; and 4) complement traditional and necessary seasonal activities;

• Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system;

• Assist villages, or consortia of villages, in developing subsistence compatible industries that will retain local dollars in villages;

• Assist in the establishment or expansion of new native owned businesses; and

• Assist villages in labor export; i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development

• Assist in developing training and education programs for local jobs in education, government, and health-related fields; and work with these agencies to encourage job replacement of non-Natives by trained Natives;

• Develop local models related to comprehensive planning and delivery of social services;

• Develop new service programs, initially established with ANA funds, which will be funded for continued operation (after the ANA grant terminates) by local communities or the private sector;

• Develop or coordinate with State-funded projects, activities designed to decrease the incidence of child abuse and neglect, fetal alcohol syndrome, and/or suicides;

• Assist in obtaining licenses to provide housing or related services from State or local governments; and

• Develop businesses to provide relief for caretakers needing respite from human service-related care work.

D. Eligible Applicants

Current ANA SEDS grantees in Alaska whose project period terminates in fiscal year 1996 (October 1, 1995—

September 30, 1996) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the ''Financial Assistance Award'' document.)

Additionally, provided they are not current ANA SEDS grantees, the following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes in Alaska;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and
- Nonprofit Native organizations in Alaska with village specific projects.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

Note: Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20% total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as ''the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.''

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area 1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community you serve will determine the type of documentation necessary.

For example, a tribal organization *may* submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native

organizations should describe their membership and define how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.
- ''Letters and other documents of commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are *not* considered a binding commitment of outside resources.)

(2) Organizational Capabilities and Qualifications. (10 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (45 Points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

G. Application Due Date

The closing date for submission of applications under this competitive area is: May 17, 1996.

H. For Further Information Contact

Sharon McCully (202) 690–5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., Room 348–F, Washington, DC 20201–0001.

Competitive Area 3. Indian Environmental Regulatory Enhancement Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1996 funds for environmental regulatory enhancement projects. Approximately $3 million of financial assistance is anticipated to be available under this announcement for environmental regulatory enhancement projects. ANA expects to award approximately 35 grants under this competitive area. The funding level for a budget period of 12 months will be up to $250,000.

B. Background

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes.

Some of the critical issues identified by tribes before Congressional committees include:

- The need for assistance to train professional staff to monitor and enforce tribal environmental programs;
- The lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and
- The lack of resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality.

As a result, Congress enacted the Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) to strengthen tribal governments through building capacity within the tribes in order to identify, plan, develop, and implement

environmental programs in a manner that is consistent with tribal culture. ANA is to support these activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture.

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups.

''Environmental regulatory enhancement'' includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions.

Other functions leading toward enhancing local regulatory capacity include, but are not limited to:

- Environmental assessments;
- Development and use of environmental laboratories; and
- Development of court systems for enforcement of tribal and Federal environmental laws.

Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

C. Proposed Projects to be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure the tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian tribes;
- Incorporated non-Federally recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Corporations/Associations with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.

The following organizations are not eligible to apply:

- Urban Indian Centers;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, Palau, or the Commonwealth of Northern Mariana Islands;
- Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Note: Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe or Native American community. If a Tribe or Alaska native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirement through cash contributions. Therefore, a project requesting $250,000 in Federal funds must include a match of at least $62,500 (20% of total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as ''the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.''

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a

current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific environmental regulatory enhancement long-range goal(s) relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The applicant's specific environmental regulatory needs; and
- A clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community you serve will determine the type of documentation necessary.

For example, a tribal organization *may* submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.
- ''Letters and other documents of commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are *not* considered a binding commitment of outside resources.)

(2) Organizational Capabilities and Qualifications. (15 Points)

(a) The management and administrative structure of the applicant is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the proposed staff and consultants should have the required qualifications and experience. The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (40 Points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and

• Requests funds which are appropriate and necessary for the scope of the proposed project.

G. Application Due Date

The closing date for submission of applications under this competitive area is March 1, 1996.

H. For Further Information Contact

Sharon McCully (202) 690–5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., SW., Room 348–F, Washington, DC 20201–0001.

Competitive Area 4. Native American Languages Preservation and Enhancement Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1996 funds for projects which assist Native Americans to assure the survival and continuing vitality of their languages. Approximately $1 million of financial assistance is anticipated to be available under this competitive area.

For Category I, Planning Grants, the funding level for a budget period of 12 months will be up to $50,000. For Category II, Design and/or Implementation Grants, the funding level for a budget period of 12 months will be up to $125,000.

B. Background

The Congress has recognized that the history of past policies of the United States toward Indian and other Native American languages has resulted in a dramatic decrease in the number of Native American languages that have survived over the past five hundred years. Consequently, the Native American Languages Act was enacted in 1990 (Title I, Public Law 101–477) to address this decline.

This Act invested the United States government with the responsibility to work together with Native Americans to ensure the survival of cultures and languages unique to Native America. This law declares that it is the policy of the United States to ''preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages.'' The Congress made a significant first step in passing this legislation in 1990, but it served only as a declaration of policy. No program initiatives were proposed, nor were funds authorized to begin a significant program to carry out this policy.

In 1992, Congressional testimony highlighted that of the several hundred Native American languages that once existed, only about one hundred and fifty-five (155) languages are still spoken or remembered today. However, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken only by the most elderly.

In response to this testimony, the Congress passed the Native American Languages Act of 1992 (Public Law 102–524) to assist Indian tribes, Alaska villages, and Native American groups to assure the survival and continuing vitality of their languages. Passage of this law is an important second step to support the survival and continuation of Native American languages. It provides a basic building block foundation upon which Tribal nations can rebuild economic strength and maintain rich cultural diversity.

The Federal government recognizes that substantial loss of Native American languages has occurred over the past several hundred years. The nature and magnitude of the status of Native American languages will become better defined as language assessments are made.

The Administration for Native Americans (ANA) believes that responsibility for achieving language(s) project results rests with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. The local community and its leadership are responsible for determining its own goals, setting priorities, and planning and implementing programs which support the community's long-range language goals.

Preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity. Therefore, projects proposed under this program announcement will contribute to the balanced development in a native community and can significantly contribute to its path toward self-sufficiency.

Under this competitive area eligible applicants will have the opportunity to develop their own language plans, increase their technical capabilities, and have access to financial and technical resources in order to assess, plan, develop and implement programs to address the survival and continuing vitality of their languages. ANA recognizes that potential applicants may have various levels of specialized knowledge and capabilities to address their specific language concerns. This competitive area is designed to take into account these special needs and circumstances.

''Language preservation'' is the maintenance of a language so that it will not decline into non-use.

''Language vitality'' is the active use of a language in a wide range of domains of human life.

''Language replication'' is defined as the application of a language program model developed in one community to other linguistically similar communities.

''Language survival'' is defined as the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

C. Proposed Projects to be Funded

There are two types of projects applicants may apply for:

• Category I—''Planning Grants''-for projects up to 12 months, the funding level will be up to $50,000 or,

• Category II—''Design and/or Implementation Grants''—for projects up to 36 months, the funding level for a budget period of 12 months will be up to $125,000.

Category I—Planning Grants

The purpose of a Planning Grant is to conduct an assessment and to develop the plan needed to describe the current status of the language(s) to be addressed and to establish community long-range language goal(s) to ensure its survival.

Project activities may include, but are not limited to:

• To collect data, organize it, and determine and describe current language status through a ''formal'' method (e.g., work performed by a linguist, and/or a language survey conducted by community members) or an ''informal'' method (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members);

• To establish the community's long-range language goals; and

• To get the necessary training and technical assistance to administer the project and achieve the project goal(s).

Category II—Design and/or Implementation Grants

The purpose of providing an option for a Design and/or an Implementation Grant is:

Option One: So tribes or communities can design and/or implement a language program to achieve the community's long-range language goal(s); and

Option Two: To accommodate where the Tribe or community is in their long-term language(s) goals continuum.

Applicants under Category II must be able to document that:

(a) Language information has been collected and analyzed, and that it is current (compiled within 36 months prior to the grant application);

(b) The community has established long-range language goals; and

(c) Community representatives are adequately trained so that the proposed project goals can be achieved.

Category II applications may include purchasing specialized equipment (including audio and video recording equipment, computers, and software) necessary to achieve the project objectives. The applicant must fully justify the need for this equipment and explain how it will be used to achieve the project objectives.

The types of projects and activities ANA can fund under Category II include, but are not limited to:

- Establishment and support of a community Native American language project to bring older and younger Native Americans together to facilitate and encourage the teaching of Native American languages skills from one generation to another;
- Establishment of a project to train Native Americans to teach Native American languages to others or to enable them to serve as interpreters or translators of such languages;
- Development, printing, and dissemination of materials to be used for the teaching and enhancement of Native American languages;
- Establishment or support of a project to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American languages; and
- Compilation, transcription, and analysis of oral testimony to record and preserve Native American languages.

Policy

It is ANA's policy that funds will not be awarded for projects addressing dead languages.

Requirement

The Institute of American Indian and Alaska Native Culture and Arts Development has been established by the Act as the repository for copies of products from Native American languages grants funded under this program announcement. At the end of the project period, products of Native American languages grants funded by this program announcement must be sent to the Institute. Specific information about the repository is in the ANA application kit.

Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364 (1993)) are not required to comply with this requirement.

D. Eligible Applicants

The following organizations are eligible to apply for funding under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and
- Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

Participating Organizations

If a tribal organization, or other eligible applicant, decides that the objectives of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a tribal school, college, or university, the applicant shall identify such school, college, or university as a participating organization in its application. Under a partnership agreement, the applicant will be responsible for the fiscal, administrative and programmatic management of the grant.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe or Native American community. If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $125,000 in Federal funds must include a match of at least $31,250 (20% total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as ''the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.''

In addition the non-Federal share may include certain funds distributed to a tribe, including interest, by the Federal government:

- Funds from the satisfaction of a claim made under Federal law;

• Funds collected and administered on behalf of such tribe or its constituent members; or

• Funds for general tribal administration or tribal development under a formula or subject to a tribal budgeting priority system, such as, but not limited to, funds involved in the settlement of land or other judgment claims, severance or other royalty payments, or payments under the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or tribal budget priority system.

A complete itemized budget must also detail the applicant's non-Federal share, and its source.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications submitted as a partnership arrangement with a school, college, or university, may use contributions from the ''partner'' organization(s) to meet the non-Federal share, as appropriate.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

F. Review Criteria

The proposed project should address the Native American languages purposes stated and described in the Background (Section B) of this competitive area.

The evaluation criteria below are closely inter-related. They are considered as a whole in judging the overall quality of an application.

Points are awarded only to applications which respond to this competitive area and to these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) The Current Status of Native American Language(s) is Described and Description(s) of Existing Programs/ Projects (if Any) Which Support the Language(s) are Included. (10 Points)

(a) The application fully describes the current status of the Native American language(s) in the community. (''Current status'' is defined as data compiled within the previous thirty-six (36) months.)

The description of ''current status'' minimally includes the following information:

(1) Number of speakers of the language(s);

(2) Age of speakers;

(3) Gender of speakers;

(4) Level(s) of fluency;

(5) Number of first language speakers (the Native language is the first language acquired);

(6) Number of second language speakers (the Native language is the second language acquired);

(7) Where the language is used (specific uses such as: home, court system, religious ceremonies, church, multimedia, school, governance activities and other, as appropriate to applicant);

(8) Source of data; (formal and/or informal); and

(9) Rate of language loss or gain.

The application has clearly described the current status of the Native American language(s) to be addressed by the project.

Note: Planning Grant applicants may not have all the information requested about their current language status, since obtaining this data may be part of the planning grant application being reviewed. Applicants applying for Category I—Planning Grants can meet this requirement by explaining their current language status and providing a detailed description of any circumstances or barriers which have prevented the collection of community language data.

(b) The application fully describes existing community language or language training programs and projects, if any, that support the Native American language to be addressed by the proposed project.

Existing programs and projects may be ''formal'' (e.g., work performed by a linguist, and/or a language survey conducted by community members) or ''informal'' (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members).

The description should answer the following:

(1) Has applicant had a community language or language training program within the last thirty-six (36) months?

(2) Has applicant had a community language or language training program within the last ten (10) years?

Applicants that answer ''no'' to either question (1) or (2) should provide a detailed explanation of what barriers or circumstances prevented the establishment or implementation of a community language program.

Applicants that answer ''yes'' to either questions (1) or (2) should describe recent language program(s), including:

(1) Program goal(s);

(2) Number of program participants;

(3) Number of speakers;

(4) Age range of participants (e.g., 0–5; 6–10; 11–18;, etc.);

(5) Number of language teachers;

(6) Criteria used to acknowledge competency of language teachers;

(7) Resources available, if any, to the applicant (e.g., valid grammars, dictionaries, and/or orthographics or describe other suitable resources); and

(8) What has been achieved.

(2) Long-Range Goals and Available Resources. (25 Points)

(a) The application describes the proposed project's long-range goal(s) and strategy, including:

• How the specific Native American(s) long range community goal(s) relate to the proposed project;

• How the goals fit within the context of the applicant's current language status; and

• A clearly delineated strategy to assist in assuring the survival and continued vitality of the Native American language(s) addressed in the community.

(b) The application explains how the community or tribal government (where one exists) intends to achieve these goals.

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/ involvement. The type of community served will determine the type of documentation necessary.

For example, a tribal organization *may* submit resolutions supporting the project proposal from each of its member's tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/ position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native

organizations should describe their membership and define how the organization operates.

(c) Available resources (other than ANA and the non-Federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, and not ''letters of support.''

- ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources.
- ''Letters and other documents of commitment'' are binding and specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA funds. These resources may be human, natural or financial, and may include other Federal and non-Federal resources.

Applicant statements that additional funding will be sought from other specific sources are *not* considered a binding commitment of outside resources.

If the applicant proposes to enter into a partnership arrangement with a school, college, or university, documentation of this commitment must be included in the application.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

(3) Project Objectives, Approach and Activities. (25 Points)

The proposed objectives in the Objective Work Plan(s) relate to the competitive area goal to ensure the survival and continuing vitality of Native American language(s). More specifically, together they will achieve the Tribe or community's language goals for the proposed project. If the project is for more than one year, the application includes Objective Work Plans for each year (budget period) proposed.

Each Objective Work Plan proposed clearly describes:

- The Tribal government's, or community's active involvement in the continuing participation of Native American language speakers;
- Measurable or quantifiable results or outcomes;
- How they relate to the community's long-range language goals;
- How the project can be accomplished with the available or expected resources during the project period;
- How the main activities will be accomplished;
- Who specifically will conduct the activities under each objective;
- For Category I projects, what the next steps may be after the Planning project is completed; and
- For Category II projects, how the project will be completed, become self-sustaining, or be financed by other than ANA funds at the end of the project period.

(4) Evaluation Plan. (15 Points)

A section of the application includes an ''Evaluation Plan'' with a baseline to measure project outcomes, including, but not limited to, describing effective language growth in the community (e.g., an increase of Native American language use). This plan will be the basis for evaluating the community's progress in achieving its language goals and objectives.

(5) Sharing Plan and Plan to Preserve Project Products (10 Points)

A section of the application includes two plans:

(a) A *Sharing Plan* that identifies how the project's methodology, research data, products or outcomes can be shared and used or modified, by other tribes or communities. If this is not feasible or appropriate, provide the reasons. The goal is to provide opportunities to ensure the survival and continuing vitality of native languages.

(b) A *Plan to Preserve Project Products* describes how the products of the project will be preserved through archival or other methods, for the benefit of future generations.

(6) Organizational Capabilities/ Qualifications and Budget. (15 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of projects of similar scope by the organization and/ or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities.

Either the position descriptions or the resumes contain the qualifications, and/ or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(c) A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

Note: (Applicants from the Native American Pacific Islands are exempt from the $200,000 non-Federal share requirement).

G. Application Due Date

The closing date for submission of applications under this competitive area is March 15, 1996.

H. For Further Information Contact

Deborah Yatsko, (202) 690–7843, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., SW., Room 348–F, Washington, DC 20201–0001

Part III—General Application Information and Guidance

A. Definitions

Funding areas in this program announcement are based on the following definitions:

- A ''multi-purpose community-based Native American organization'' is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but

need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.

- A ''multi-year project'' is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- ''Budget Period'' is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.
- ''Core administration'' is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.
- ''Environmental regulatory enhancement'' includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.
- ''Language preservation'' is the maintenance of a language so that it will not decline into non-use.
- ''Language vitality'' is the active use of a language in a wide range of domains of human life.
- ''Language replication'' is the application of a language program model developed in one community to other linguistically similar communities.
- ''Language survival'' is the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

B. General Considerations

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that *are* funded with ANA grant funds.

Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which 1) include the salaries of personnel, 2) occupy space, and 3) benefit from the organization's indirect costs.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. ''Completed'' means that the project ANA funded is finished, and the desired result(s) have been attained. ''Self-sustaining'' means that a project will continue without outside resources. ''Supported by other than ANA funds'' means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

C. Activities That Cannot be Funded by ANA

The Administration for Native Americans does not fund projects that operate indefinitely or require ANA funding on a recurring basis. The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. ''Core administration'' is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

Under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered ''core administration'' and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section H, General Guidance to Applicants, below.

D. Multi-Year Projects

Applicants may apply for projects of up to three years. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

E. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

F. The Application Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: 93612–961, Telephone: (202) 690–7776.

2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the specific closing date of each ANA competitive area to: Department of

Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, ACF Guard Station, Washington, DC 20447, Attention: William J. McCarron, ANA No. 93612–961.

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, SW., Washington, DC 20024.

The application (Form 424) must be signed by an individual authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Each tribe, Native American organization, or other eligible applicant may compete and receive a grant award in each of the three competitive areas under this announcement. The Administration for Native Americans will accept only one application per competitive area from any one applicant. Alaska Native entities may submit a SEDS application under either competitive area 1 or 2, but not under both.

If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with (1) American Indian Tribes and Native American communities and organizations, (2) environmental issues, and (3) Native American languages, as appropriate, evaluates each application using the published criteria in each funding competitive area. As a result of the review, a numerical score will be assigned to each application.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

G. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

3. Determination of Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. Section 810(b) of the Native American Programs Act, as amended, 42 U.S.C. 2991h, specifies the appeals process when ANA determines that an organization or activities are ineligible for assistance. When an applicant or the activities proposed by the applicant are rejected as ineligible, the applicant will be advised of the appropriate appeal process.

H. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitutes their specific ''community.''
- Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For tribes, a current signed resolution from the governing body of the tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution

from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

- Applications from National Indian and Native organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.
- The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.
- Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.
- In the ANA Project Narrative, Section A of the application package, ''Resources Available to the Proposed Project,'' the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.
- Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or a new business, if the applicant includes a business plan that clearly describes its feasibility and the approach for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.
- Applications which were disapproved under a previous closing date and revised for resubmission should make reference to the changes in their current application which are based on ANA panel review comments.

2. Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.
- Applicants are strongly encouraged to submit proposals addressing environmental regulatory enhancement and Native American languages preservation and enhancement under the issue-specific competitive areas described in this announcement.
- For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of Federally recognized Indian tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other Federally recognized Indian tribes which are not included on this list (e.g., those Tribes which have been recently recognized or restored by the United States Congress) are also eligible to apply for ANA funds.
- The Administration for Native Americans will accept only one application, per competitive area, from any one applicant. If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.
- Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a Tribe, or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.
- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.
- An application with an original signature and two additional copies are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.
- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.
- Line 15a of the Form 424 must specify the Federal funds requested for

the first Budget Period, not the entire project period.

- If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)
- Applicants may propose a 17 month project period. However, the project period for the first year of a multi-year project may only be 12 months.
- Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.
- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.
- The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. ''Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.'' During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.
- Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3, and Native American languages projects submitted under Competitive Area 4.
- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not interested in funding ''wish lists'' of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. However, under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.
- Project goals which are not responsive to one or more of the funding competitive areas.
- Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. Proposals from consortia of tribes should have individual objectives which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both a consortia of tribes and the tribes who belong to the consortia receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member tribes.
- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.
- ANA will not fund the purchase of real estate (see 45 CFR 1336.50 (e)) or construction (see ACF Grants Administration Manual § 3.12).
- ANA will not fund investment capital for purchase or takeover of an existing business, for purchase or acquisition of a franchise, or for purchase of stock or other similar investment instruments.
- Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.
- Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

I. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. Law 96–511, as amended in 1986, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations, including program announcements. All information required by this is covered under the following OMB Approval Nos:

- SF 424 OMB Clearance No. 0348–0043 Application for Federal Assistance Standard Form 424
- SF 424A OMB Clearance No. 0348–0044 Budget Information
- SF 424B OMB Clearance No. 0348–0040 Assurances—Non Construction Programs
- OMB Clearance No. 0980–0204 ANA Program Narrative, Application for Federal Assistance

J. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section F, The Application Process: Application Submission. The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

1. Deadlines

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

- Received on or before the deadline date at the address specified in Section F2, Application Submission; or
- Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark

date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

- No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Children and Families shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of deadlines

The Administration for Children and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Numbers: 93.612 Native American Programs; 93.581 Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality; and 93.587 Promoting the Survival and Continuing Vitality of Native American Languages.)

Dated: August 30, 1995.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 95–22073 Filed 9–6–95; 8:45 am]

BILLING CODE 4184–01–P

Administration for Children and Families

New Child Welfare Waiver Demonstration Project Proposals Submitted Pursuant to Section 1130 of the Social Security Act (the Act); Title IV–E and IV–B of the Act; Public Law 103–432

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for child welfare waiver demonstration projects submitted to the Department of Health and Human Services pursuant to **Federal Register**, Volume 60, No. 115, published Thursday, June 15, 1995. Federal approval for the proposals has been requested pursuant to section 1130 of the Social Security Act.

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project or requests for copies of a proposal, contact the State contact listed for that project.

Comments on a proposal should be addressed to:

Michael W. Ambrose, Administration on Children, Youth and Families, Children's Bureau, 330 C Street, SW. Mary E. Switzer Building, Room 2068, Washington, D.C. 20201, FAX: (202) 205–9345

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1130 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve child welfare waiver demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On June 15, 1995, we published a notice in the **Federal Register** (Volume 60, No 115, page 31478) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1130 of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1130; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New Proposals

As part of our procedures, we are publishing a notice in the **Federal Register** of all new proposals. This notice contains summaries of 14 proposals received by July 31, 1995, the date established for the first round of proposals. Each of the proposals contains an assurance that the proposed demonstration effort will be cost neutral to the federal government over the life of the proposed effort; and each proposal contains an evaluation component designed to assess the effectiveness of the project.

The June 15, 1995 **Federal Register** Announcement indicated the Department would give priority consideration to proposals received by July 31, 1995. Further, if ten states had not been approved, additional proposals would be accepted by September 30, 1995 and at the end of each calendar quarter thereafter until ten waiver demonstration projects have been approved. The next date for acceptance of any child welfare waiver demonstration proposals is changed to December 31, 1995.

STATE: CALIFORNIA.

DESCRIPTION: California proposes to extend, and broaden to include the use of federal funds, a planned State Partnership Demonstration Project that will provide direct funding to counties for the implementation of child welfare services. Participating counties would receive from the State a single allocation of funds for family and children's services, rather than using categorical funding streams.

The project would enhance the counties' abilities: to meet families' needs more comprehensively; to increase the focus on outcomes; to provide additional in-home services which will result in less need for out of home care; and to contain costs.

The State anticipates that enhanced flexibility in the use of federal funds, reduced administrative requirements and a new ''outcome-oriented oversight role'' will improve outcomes for children and families, including more effective prevention services that will reduce the need for out of home care. The State is particularly interested in promoting a whole family foster care program and long term options for children in kinship care.

The State proposes, potentially, to waive a large number of statutory (and regulatory) provisions, which would be based on negotiations among federal, State and local child welfare services officials regarding specific local waiver proposals. For each of many statutory provisions, the state proposes conditionally to ''request waiver of this section to the extent necessary to implement the proposed demonstration project.'' Statutory items include certain title IV–E State plan requirements, title IV–E income eligibility requirements, statutory definitions (including definitions of eligible facilities), requirements regarding adoption assistance payments, required statistical reports, and Independent Living Program eligibility requirements. Regulatory items proposed for waiver include limitation on the sources of state match, cost allocation plan

requirements, general grant administration requirements, fiscal regulations, the State allotment determination formula, payment review and facility licensing standards, and regulations regarding the withholding of federal funds.

CONTACT PERSON: Marjorie Kelly, Deputy Director, Children and Families Services Division, California Department of Social Services, 744 P Street M.S. 19073, Sacramento, CA 95814, (916) 657–2614, (916) 653–1695 (FAX).

STATE: DELAWARE.

DESCRIPTION: Delaware proposes a wavier project which has two components. In the first, the State would use multi-disciplinary teams composed of social workers and substance abuse counselors to address the problem of parental substance abuse that creates risks for children and families. This aspect of the project is designed to reduce the number of children coming into out of home care; to delay entry into care; or to reduce the amount of time spent in foster care. The second component involves adding assisted guardianship to the permanency continuum when adoption is not possible and a family has made a long-term commitment to the child. This option is proposed as a cost saving alternative to placing children in foster care.

In establishing a multi-disciplinary team to address parental substance abuse issues, the State anticipates that the services will prevent placement or significantly reduce the duration of placement for 50% of the children in the demonstration units that would come into care because of parental substance abuse. In adding guardianship as a continuum of care option, the State projects that 10 children/youth per year who are currently maintained in long-term foster care will be moved to the guardianship program.

The State proposes to contract with local substance abuse treatment agencies to provide counselors to be co-located with child protective services staff. This effort would provide multi-disciplinary assessment and treatment services for approximately 180 families a year for a period of three years.

The second component of the proposal would make guardianship an available alternative to the caretaking families, thus enabling a child's case to be closed while still making financial and other services available to the family as needed. This option would be considered when adoption is not possible and a family has made a long-term commitment to the child/youth.

For the use of a multi-disciplinary team to provide assessment and treatment services, the State is proposing to waive the prohibition on the expenditure of title IV–E funds for services. For the guardianship component, the State seeks to waive provisions governing eligibility for title IV–E foster care maintenance payments, so that caretaking guardians of children formerly in placement might receive payments comparable to title IV–E foster care maintenance payments.

CONTACT PERSON: Kathryn J. Way, Director, Division of Family Services, Delaware Department of Services for Children and Their Families, 1825 Faukland Road, Wilmington, DE 19805, (302) 633–2650, (302) 995–8290 (FAX).

STATE: DISTRICT OF COLUMBIA.

DESCRIPTION: The District of Columbia proposes to develop a community-based therapeutic model of services to serve as an alternative to placing children in more restrictive institutional settings, as well as providing a transitional bridge for those children returning to the community upon discharge from institutional care.

The flexible use of title IV–E and IV–B funds would allow for the development and provision of a community-based model of therapeutic services to prevent foster home and institutional placement and would increase inter/intra agency and multi-system coordination of services.

The demonstration project would include the use of a ''managed care'' approach through the use of rate setting procedures to include articulated caps, and a system to provide comprehensive multi-system social and support services. The community-based therapeutic approach would include specialized emergency foster care homes; shared family care; in-home treatment; use of professional surrogate parents; and substance abuse treatment services.

The District of Columbia proposes title IV–E waivers to allow payment for services, and to permit the support of alternatives to foster home and institutional placement through use of a rate-setting process to be established under the demonstration project.

CONTACT PERSON: Ricardo Lyles, Acting Administrator, Family Services Administration, District of Columbia Department of Human Services, 609 H Street, NE, Washington, DC 20002, (202) 724–8756, (202) 727–9460 (FAX).

STATE: GEORGIA.

DESCRIPTION: Georgia proposes to use title IV–E funds to fund preventive and supportive services for children and families at risk, to eliminate the need for placement or reduce the time a child spends in out of home care. Additionally, Georgia seeks to place children in neighborhood settings; provide specialized living arrangements for adolescents, and obtain special adoption assistance to expedite the placement of children into adoptive homes.

The benefits for this demonstration project include removing systems barriers, decreasing or avoiding the amount of time a child spends in out of home care, providing more stable placements, expanding preventive and family support service systems and increasing adoptive placements by making resources available to adoptive families that otherwise would not qualify.

The services to be provided under the demonstration project include family support and prevention services, expansion of kinship care, and community placement services.

Georgia proposes to expand title IV–E coverage to include placement prevention and reunification services. The State also wishes to waive some provisions of title IV–E eligibility determination when a child comes into custody, provide a special waiver to provide adoption assistance to pay for the purchase of services to expedite adoptive placement, and provide funds for adoptive parents for one-time expenses related to the placement of a specific child in the home. Georgia also seeks a waiver to permit title IV–E funds to support a kinship care assistance subsidy, and a waiver of some provisions of title IV–A to allow families whose children are in foster care to continue receiving food stamps, when reunification is expected to occur within 180 days.

CONTACT PERSON: Doris Walker, Foster Care Unit Chief, Georgia Department of Human Resources, Division of Family and Children Services, Two Peachtree Street, NW., Suite 12–300, Atlanta, GA 30303–3180, (404) 657–3458, (404) 657–3415 (FAX)

STATE: ILLINOIS.

DESCRIPTION: Illinois is proposing a subsidized private guardianship as a permanency planning option which would meet the needs of the long-term kinship care population, in order to reduce the number of children in long-term foster care and to reduce the number of disrupted placements.

Illinois seeks to improve permanency outcomes for children in healthy kinship care arrangements in cases where reunification and adoption are not possible. The demonstration project

would reduce government intrusion in family life while creating support and clinical management systems which minimize risk through annual reviews of subsidized private guardianship and continuous promotion of adoption options.

Illinois would provide a subsidized private guardianship program (which parallels the adoption subsidy program) for a random group of eligible caregivers.

The State proposes a waiver of title IV–E to permit withholding subsidized guardianship from a randomly selected control group; a waiver of certain provisions of the Adoption Assistance Program to authorize subsidized guardianship for children who meet the eligibility requirements of Section 673 and additional requirements set by the State, in order to authorize payment of nonrecurring guardianship expenses, and for guardianship assistance payments for children; a waiver of eligibility requirements to limit assistance to special needs children; a waiver that would permit federal financial participation in amounts expended as guardianship support payments pursuant to guardianship assistance agreements; and a waiver to authorize federal financial participation in amounts expended on training and administration for the subsidized guardianship program and a waiver of the provision defining ''adoption agreement'' to allow that term to include ''guardianship assistance agreement.''

CONTACT PERSON: Joe Loftus, Executive Deputy Director, Illinois Department of Children and and Family Services, 100 West Randolph, 6th Floor, Chicago, IL 60601, (312) 814–8741, (312) 814–6859 (FAX).

STATE: INDIANA.

DESCRIPTION: Indiana proposes to divert per diem funds from restrictive (primarily institutional) placements to more community-based services in order to create more home-based in-state placements for children, placements which would be more supportive of family unity.

The effort would result in fewer high cost, out of state child placements; fewer removals from home, and earlier reunification; improved family functioning; expeditious adoptions; timely transitions to independent living; and improved outcomes for children.

Indiana would modify existing interagency agreements between the Division of Family and Children Services and juvenile court judges to include community partners such as mental health, education and the Step Ahead Council. The local office of Family and Children Services, the county probation office, community mental health center or the school corporation seeking placement of a child would convene a meeting of partners to develop alternatives to restrictive placement.

Indiana proposes to waive title IV–E to permit payment of proposed services: even when a child has not been judicially removed from the home; in order to prevent the placement of a child in out of home care; and for the child in substitute care who is not categorically eligible for title IV–E foster care.

CONTACT PERSON: James Hmurovich, Director, Division of Family and Children, Family and Services Administration, Room W392, Government Center south, 402 West Randolph Street, Indianapolis, IN 46204, (317) 232–4705, (317) 232–4490 (FAX).

STATE: MARYLAND.

DESCRIPTION: Maryland proposes to add federal guardianship assistance as a permanency planning option which would more closely meet the needs of the kinship care population.

This effort would result in reduced average length of stay in out of home placement for children; increased stability for children, and empowerment/support for the caretaking family.

Under this demonstration project in order to be eligible a child would have to be committed to the local department of social services as a child in need of assistance and to have been in a successful out of home placement with the prospective guardian for a minimum of six months. Reunification and adoption would have to be appropriately ruled out as permanency planning options. Resources for the child (SSI, Social Security Survivor's Benefits, etc.) would be transferred to the guardian and deducted from the subsidy. Prospective guardians would be required to sign a guardianship agreement which would require annual renewal.

CONTACT PERSON: Fern Blake, Maryland Department of Human Resources, 311 West Saratoga Street, Baltimore, MD 21201–3521, (410) 767–7269, (410) 333–0099 (FAX).

STATE: MICHIGAN.

DESCRIPTION: Michigan proposes to increase its emphasis on family preservation and family support services and decrease the need for and reliance on out of home care by using title IV–E funds to provide services.

The effort would result in controlled growth of title IV–E maintenance expenditures; greater collaboration among federally-funded programs; increased ability to provide services for families; and decreased reliance on out of home care.

Michigan is proposing to treat title IV–E maintenance payments (other than those for adoption subsidy) as a capped entitlement. The State is proposing to use the funds for service provision, in some cases augmenting funds now being expended under title IV–B Subpart 1 (Child Welfare Services) and Subpart 2 (Family Preservation and Support). The funds would be used to expand grants to local communities and to implement family preservation and support services more quickly.

Michigan is proposing to waive those provisions of title IV–E which restrict States from expending these funds for the provision of services. Michigan excludes title IV–E adoption assistance from its waiver proposal.

CONTACT PERSON: David Berns, Director, Office of Children's Services, Michigan Department of Social Services, 235 South Grand Avenue, P. O. Box 30037, Lansing, MI 48909, (517) 335–6159, (517) 241–7047 (FAX).

STATE: MINNESOTA.

DESCRIPTION: Minnesota proposes to establish relative-based living arrangements as an alternative to out of home care.

The results of this project would be enhanced permanency for children including maintaining a continuity of relationships and a sense of belonging; protection for children who are at risk; lessened government intrusion into families; a greater connection for children with their families and communities; support for kinship placements; lessened time in substitute care; multiple placements will be reduced; and expenditures for out of home placement will be contained.

The proposed demonstration project focuses on placement with family members and would provide support for temporary relative guardianship; permanent relative guardianship; voluntary relative foster care; and court-ordered relative foster care.

Minnesota proposes waivers of provisions under title IV–E in order to exclude grandparents from the foster care licensing requirements; and approval of a financial support structure that allows differential payments based on need. Specific services under this waiver project would include guardianship subsidies, differential foster care support, and specialized training for relative caregivers.

The State also proposes waivers of certain provisions of title IV–A in order

to apply the special child standard of assistance in situations where the child is living in one of a range of relative care arrangements; and flexibility to use emergency assistance funds to help relative caregivers meet minimum health and safety standards. Specific services under this waiver would include guardianship, subsidies and alternative care grants.

CONTACT PERSON: Robert DeNardo, Supervisor, Family and Children's Service Division, Minnesota Department of Human Services, 444 Lafayette Road North, St. Paul, MN 55112–3831, (612) 296–5288, (612) 297–1949 (FAX).

STATE: NEW YORK.

DESCRIPTION: New York proposes to use a managed care approach to child welfare services to recapture revenue for reinvestment in preventive and aftercare services in local communities.

The benefits of this effort would be an accelerated decline in the foster care population; an increase in the level of services; and a reduction in the length of stay in foster care.

New York proposes to apply the principles of managed care to its foster care and adoption assistance programs by identifying preset payments for a range of services for a specified population over a predetermined period of time (capitated payments) and adjusting treatment regimens in light of outcomes so that the client receives the necessary services to continue to make progress toward the stated goals of intervention (care management). The State also proposes to increase the availability of child welfare services so that pre-placement preventive and aftercare services can be intensified.

New York proposes to waive: title IV–E requirements regarding the eligibility of children and of foster care facilities; the definition of ''special needs'' for which title IV–E funds may be used; the circumstances under which these funds may be claimed; and certain requirements concerning title IV–E administration and training.

CONTACT PERSON: Fred Wulczyn, Office of Family and Children Services, Division of Services and Community Development, New York State Department of Social Services, 40 North Pearl Street, Albany, NY 12243–0001, (518) 486–3431, (518) 474–9004 (FAX).

STATE: NORTH CAROLINA.

DESCRIPTION: North Carolina proposes outcome-based management of foster care, in which foster care funding is tied to specific outcomes related to diverting children from foster care whenever possible and moving quickly to achieve permanence for children.

The benefits from this demonstration effort would: link funding and outcomes and measure the effect on service delivery system performance; demonstrate and evaluate the effectiveness of a comprehensive outcome-based approach; decrease the amount of time children spend in foster care, reduce the number of new entries into foster care, and promote collaborative planning and coordination of services with several other initiatives currently underway in the State.

The proposed demonstration effort has two parts. Part I is designed to encourage the development of effective community-based reunification, adoption and aftercare services. Part II is designed to achieve a paradigm shift that allows local programs to move resources from treatment to prevention.

The waiver requests the use of title IV–E foster care funds on behalf of children not presently eligible: to allow local social service agencies to use a capitated rate structure with incentives for achieving specified outcomes; to allow local social service agencies to contract with public, private non-profit and private for profit entities as needed to develop an effective community network of services; and to allow participating agencies to reinvest savings realized from performance excellence in child welfare services.

CONTACT PERSON: Chuck Harris, North Carolina Department of Human Resources, Division of Social Services, 325 Salisbury Street, Raleigh, NC 27603, (919) 733–9467, (919) 715–0024 (FAX).

STATE: OHIO.

DESCRIPTION: Ohio proposes to reduce child removals and/or time of children in placement and associated costs through the use of managed care technology to provide a broader array of services to children and their families.

The benefits of this effort would include decreasing placement costs, increasing the level and quality of services; strengthening local partnerships; and expediting the permanency planning process.

The proposed demonstration effort represents a partnership between public children's service agencies (PCSAs), the Ohio Department of Human Services (ODHS), and managed care entities (MCE). Decision making and risk will be shared among the PCSAs, ODHS and the MCE. ODHS's role is that of coordinator, facilitator and provider of training and technical assistance. The PCSAs' role is primarily as purchasers of services, and they may or may not provide all the direct service functions themselves. The MCE will be responsible for administrative and management functions, medical/clinical reviews, utilization management and service authorization, developing and operating a management information system, developing contracts with providers and payers, and consumer satisfaction-related duties.

The current system of services will continue but with managed care options being considered at decision making points. A policy consortium will be created to develop and implement policy and practices that support permanency planning and provide guidance to the local PCSAs. The terms and conditions developed by the Consortium will bind the provider agencies to uniformly implement the agreed upon practice criteria and to ensure consistency for evaluation purposes across the waiver sites.

Ohio proposes to waive a number of title IV–E provisions that relate to restrictions on child eligibility, and prohibitions on the use of title IV–E funds for the provision of services.

CONTACT PERSON: Isaac Palmer, Deputy Director, Office of Child Care and Family Services, Ohio Department of Human Services, 30 East Broad Street, Columbus, OH 43266–0423, (614) 466–1213, (614) 466–9247 (FAX).

STATE: OREGON.

DESCRIPTION: Oregon proposes to use title IV–E funds for services including but not limited to prevention and support services, protective services, crisis intervention and reunification services. The State also proposes to develop a kinship foster care rate that would be individually determined based on the needs of the child.

The demonstration project would provide flexible funding for abused and neglected children and their families and/or caregivers to receive individual services, regardless of where the chid is placed. Specific outcomes expected would include decreasing the length of foster care placement, increasing the number of children remaining safely in their homes, increasing the use of relative caretakers for children who must be placed out of the home, having more appropriate foster care resources and better utilization of community resources.

The proposed demonstration project would provide support to biological, foster and kinship caretakers through a myriad of services. The State proposes to shift toward a statewide system of in-home care services delivery, insure a match between the child's needs and the skill of the caretakers, establish mechanisms that will refocus the out of home care systems and move closer to implementation of a ''first placement/

only placement'' objective for children who are unable to remain with their parent(s).

Oregon proposes to waive those provisions of title IV–E: that require a State to make foster care maintenance payments; that require that foster care maintenance payments be made only on behalf of a child who resides in a foster family home or a child care institution; and that concern the conditions for federal reimbursement for voluntary placements.

CONTACT PERSON: Richard Schoonover, State Office of Services for Children and Families, Oregon Department of Human Resources, 500 Summer Street, NE, Salem, OR 98310–1017, (503) 945–6882, (503) 328–3800 (FAX).

STATE: WEST VIRGINIA.

DESCRIPTION: West Virginia will create a comprehensive, decentralized, specialized system to determine a child's potential eligibility for all funding resources for child welfare programs.

The proposed system would maximize the State's child welfare funds by identifying and accessing additional financial resources available to children in care. The new system would emphasize parental obligation and encourage parental participation.

A resource development unit will be created to identify, pursue and produce accurate claims for all sources of funds to which a child in care may be entitled, e.g., child support, SSI, Black Lung, Railroad Retirement, third party medical, SSA, Veterans's Benefits and titles IV–A, IV–B and IV–E.

West Virginia is requesting a waiver of the title IV–E limit of fifty percent for Federal Financial Participation in a State's administrative costs.

CONTACT PERSON: Mary Jarrett, West Virginia Department of Health and Human Resources, Office of Social Services, Bldg. 6, Room B–850, State Capitol Complex, Charleston, WV 25305, (304) 558–7980, (304) 558–8800 (FAX).

III. Requests for Copies of a Proposal

Requests for copies of a Child Welfare Waiver Demonstration Project proposal should be directed to the appropriate State at the telephone number given above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93.645, Child Services—State Grants; 93.658, Foster Care Maintenance; 93.659, Adoption Assistance)

Dated: August 31, 1995.

Joseph A. Mottola,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. 95–22230 Filed 9–6–95; 8:45 am]

BILLING CODE 4184–01–P

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be on Thursday, September 28, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the DoubleTree Hotel, 300 Army-Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 603, Rockville, Maryland 20852, (301) 594–1459.

In addition, if sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6665 no later than September 20.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are: Robert A. Berenson, M.D.; F. Marian Bishop, Ph.D.; Linda Burnes Bolton, Dr.P.H.; John W. Danaher, M.D.; Helen Darling, M.A.; Nancy J. Kaufman, M.S.; William S. Kiser, M.D.; Robert M. Krughoff; Risa J. Lavizzo-Mourey, M.D.; W. David Leak, M.D.; Harold S. Luft, Ph.D.; Barbara J. McNeil, M.D.; Walter J. McNerney, M.H.A.; Edward B. Perrin, Ph.D.; Louis F. Rossiter, Ph.D.; Albert L. Siu, M.D.; and Ellen B. White, M.B.A.

There also are Federal ex officio members. These members are: Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Thursday, September 28, 1995, the meeting will begin at 8:30 a.m. with the call to order by the Council Chairman. The Administrator, AHCPR, will update the status of current Agency issues and program initiatives followed by Council discussion. The meeting will adjourn at 5:30 p.m.

Agenda items are subject to change as priorities dictate.

Dated: August 30, 1995.

Clifton R. Gaus, D. Sc.,

Administrator.

[FR Doc. 95–22220 Filed 9–6–95; 8:45 am]

BILLING CODE 4160–90–M

National Institutes of Health

Technology Assessment Conference on Integration of Behavioral and Relaxation Approaches Into the Treatment of Chronic Pain and Insomnia

Notice is hereby given of the NIH Technology Assessment Conference on ''Integration of Behavioral and Relaxation Approaches Into the Treatment of Chronic Pain and Insomnia,'' which will be held October 16–18, 1995, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on October 16, at 8 a.m. on October 17, and at 9 a.m. on October 18.

Millions of Americans are afflicted with persistent medical disorders that involve behavioral and psychological components. Chronic pain and insomnia are two of the more common disorders with such involvement. Despite the acknowledged importance

of psychological and behavioral factors in these disorders, treatment strategies have tended to focus on medical interventions such as drugs and surgery. The purpose of this conference is to examine the benefits of more consistently integrating behavioral and relaxation approaches with biomedical interventions in clinical settings using chronic pain and insomnia as examples.

More consistent and effective integration of behavioral and relaxation approaches requires the development of precise definitions of the most frequently used techniques, which include hypnosis, meditation, biofeedback, and cognitive therapy. It is also necessary to examine how these interventions have been previously used with somatic therapies in the treatment of chronic pain and insomnia and to evaluate the efficacy of such integration to date. The conference will review the relative merits of specific behavioral and relaxation interventions as well as identify biophysical and psychological factors that might predict the outcome of applying these techniques. Finally, the conference will examine the mechanisms by which behavioral and relaxation approaches could lead to greater clinical efficacy.

The conference will bring together experts in behavioral medicine, pain medicine, insomnia, psychology, neurology, and behavioral and neurosciences as well as representatives from the public.

After 1½ days of presentations and audience discussion, an independent, non-Federal panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The statement will address the following key questions:

- What behavioral and relaxation approaches are used for conditions such as chronic pain and insomnia?
- How successful are these approaches?
- How do these approaches work?
- Are there barriers to the appropriate integration of these approaches into health care?
- What are the significant issues for future research and applications?

The primary sponsors for this conference are the NIH Office of Alternative Medicine and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Cancer Institute; National Institute on Aging; National Institute of Arthritis and Musculoskeletal and Skin Diseases; National Institute of Dental Research; National Heart, Lung, and Blood Institute; National Institute of Mental Health; National Institute of Neurological Disorders and Stroke; and National Institute of Nursing Research.

Advance information on the conference program and conference registration materials may be obtained from: Laura Hazan, Technical Resources International, Inc., 3202 Tower Oaks Blvd., suite 200, Rockville, Maryland 20852, (301) 770–3153.

The technology assessment statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning October 18, 1995, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: August 28, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–22202 Filed 9–6–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 36299, July 14, 1995) is amended to reflect the reorganization and revision of function statements of the National Cancer Institute (NCI) (HNC) as follows: (1) Establish the Division of Basic Sciences (HNC7); Division of Clinical Sciences (HNC8); Division of Cancer Epidemiology and Genetics (HNC9); Division of Cancer Treatment, Diagnosis, and Centers (HNCB); Division of Cancer Biology (HNCC); and Office of Intramural Management (HNC17). (2) Abolish the Division of Cancer Biology, Diagnosis and Centers (HNC2); Division of Cancer Etiology (HNC3); and Division of Cancer Treatment (HNC6). (3) Retitle the Office of Administrative Management (HNC13) as the Office of Extramural Management. (4) Revise the functional statements for the Division of Cancer Prevention and Control (HNC4) and the Division of Extramural Activities (HNC5).

Section HN–B, Organization and Functions is amended as follows: (1) Under the heading *National Cancer Institute (HNC),* insert the following:

Office of Extramural Management (HNC13)

(1) Plans, directs, and coordinates the administrative management activities of the Office of the Director and the extramural programs, with Institute wide responsibility for budget and grant and contract policy. Areas of management responsibility include grants management; contracts management; finance and budget; personnel; management analysis; financial data and statistics; office automation, automatic data processing, and management information systems; and other areas related to the general administration of the Institute; (2) advises the Institute Director and senior staff on the administrative management of the Institute and its programs; (3) develops and promulgates policies, guidelines, and procedures on matters relating to the administrative management of the Office of the Director and the extramural programs; and (4) formulates and executes action plans in response to administrative problems or initiatives, directives, regulations, legislation or anything else that might require administrative action or have administrative implications.

Office of Intramural Management (HNC17)

(1) Plans, directs, and coordinates the administrative management activities of the Office of Intramural Management and the intramural programs, with Institute wide responsibility for personnel and information resource management policy. Areas of management responsibility include contracts management; finance and budget; personnel; management analysis; financial data and statistics; office automation, automatic data processing, and management information systems; and other areas related to the general administration of the Institute; (2) advises the Institute Director and senior staff on the administrative management of the Institute and its programs (3) develops and promulgates policies, guidelines, and procedures on matters relating to the administrative management of the Intramural Program; and (4) formulates and executes action plans in response to administrative problems or initiatives, directives, regulations, legislation or other matters necessitating administrative action or having administrative implications.

Division of Basic Sciences (HNC7)

(1) Plans, directs, coordinates and evaluates the Institute's intramural programs in basic science relating to

cellular, molecular, genetic, biochemical and immunological mechanisms relevant to the understanding, diagnosis and treatment of cancer; (2) establishes program priorities, allocates, resources, integrates the projects of the various laboratories, evaluates program effectiveness and represents the division in management and scientific decision-making meetings within the Institute; (3) identifies the need for and establishes new intramural research activities; (4) supports training and research opportunities in the basic sciences for young investigators; (5) supports translation of research findings by integrating and coordinating the divisional research activities with other NCI divisions, with the institutes, centers, and divisions within the National Institutes of Health as well as with the private sector and the academic research community.

Division of Clinical Sciences (HNC8)

(1) Plans, directs, coordinates and evaluates patient care activities of the NCI; (2) conducts pioneering clinical research on cancer which translates fundamental research to the bedside in a bi-directional manner; (3) establishes program priorities, allocates clinical resources, integrates the projects of the various branches, evaluates program effectiveness and participants in pertinent management and scientific decision-making meetings within the Institute; (4) addresses clinical research issues requiring urgent attention that cannot readily be pursued through the extramural community; (5) through intramural studies and contracts, administers research in the diagnosis, treatment, and prevention of cancer; (6) develops novel models for carrying out translational research in an efficient and cost-effective manner; (7) develops state-of-the-art educational programs for the education and mentorship of clinical scientists and investigators; and (8) advises the Director of the National Cancer Institute, and supports the activities of the National Cancer Advisory Board and other scientific advisory committees.

Division of Cancer Epidemiology and Genetics (HNC9)

(1) Plans, directs, manages, and evaluates a program of epidemiologic, demographic, biostatistical, and population-based genetic research, as well as provides resources to support such research; (2) uses intramural, contract, interagency, cooperative agreement, and grant mechanisms to administer and manage research in epidemiology, genetics, biometry, and collaborative interdisciplinary approaches to clarify the distribution, causes, and natural history of cancer, as well as the means for its prevention; (3) establishes program priorities, allocates available resources, integrates the activities of various branches, evaluates program effectiveness, and participates in pertinent management and scientific decision-making meetings within the Institute; and (4) advises the Institute Director and supports the activities of the Board of Scientific Counselors, the National Cancer Advisory Board, and other advisory committees.

Division of Cancer Treatment, Diagnosis, and Centers (HNCB)

(1) Plans, directs and coordinates a program of extramural preclinical and clinical cancer treatment research as well as research conducted in cooperation with other Federal agencies with the objective of curing or controlling cancer in man by utilizing treatment modalities singly or in combination; (2) administers targeted research and development programs in areas of drug development, diagnosis, biological response modifiers and radiotherapy development; (3) serves as the national focal point for information and data on experimental and clinical studies related to cancer treatment and for the distribution of such information to appropriate scientists and physicians; and (4) plans, directs and coordinates an extramural program of basic and applied research conducted at cancer centers and through the organ systems program.

Division of Cancer Biology (HNCC)

(1) Plans, directs, coordinates and evaluates a contract and grant-supported program of extramural basic and applied research on cancer cell biology and cancer immunology including the biological and health effects of exposures to ionizing and non-ionizing radiation and the role of chemical or physical agents, acting separately or together, or in combination with biological agents in the inhibition or promotion of cancer; (2) plans, manages and monitors the research and research support activities of the contractor(s) at the government-owned contractor operated (GOCO) facilities at the Frederick Cancer Research and Development Center; (3) plans and administers an extramural program which supports and fosters cancer research training, cancer clinical education, and cancer research career development in order to assure the continuing existence of a national cadre of highly qualified individuals to work in the fields of cancer research, treatment and control; (4) administers a program of support for the construction, alteration, renovation, and equipping of extramural research facilities that house or will house cancer research and/or treatment activities; (5) establishes program priorities, allocates resources, integrates the projects of the various branches, evaluates program effectiveness and participates in pertinent management and scientific decision-making meetings within the Institute; and, (6) advises the Institute Director, and other Institute staff on extramural research in cancer biology and associated areas of science of interest to the Institute and supports the activities of the Board of Scientific Counselors, the National Cancer Advisory Board, and other advisory committees.

Division of Cancer Prevention and Control (HNC4)

(1) Plans and directs the extramural program of cancer prevention and control research for the Institute; (2) coordinates a number of geographically-based cancer surveillance systems and applies statistical, analytic, and other quantitative methods to monitor, evaluate, and report on cancer trends and the impact of cancer; (3) develops and supports research training and career development in cancer prevention and control; and (4) coordinates program activities with other Divisions, Institutes, or federal and state agencies, and establishes liaison with professional and voluntary health agencies, cancer centers, labor organizations, cancer organizations and trade associations.

Division of Extramural Activities (HNC5)

(1) Administers and directs the Institute's grant and contract review activities; (2) provides initial technical and scientific merit review of grants and contracts for the Institute; (3) represents the Institute on overall NIH extramural and collaborative program policy committees, coordinates such policy for the review and administration of grants and contracts; (4) coordinates the Institute's review of research grant and training programs with the National Cancer Advisory Board and the President's Cancer Panel; (5) coordinates the implementation of committee management policies within the Institute and provides the Institute's staff support for the National Cancer Advisory Board and the President's Cancer Panel; (6) monitors and coordinates the operation of the NCI Board of Scientific Counselors and its subcommittees to assure uniformity and quality of scientific review of, and advice concerning, the NCI intramural

research program; (7) monitors and coordinates the operations of the NCI Board of Scientific Advisors to assure uniformity and quality of review of, and advice concerning, the NCI extramural program; (8) coordinates program planning and evaluation in the extramural area; (9) provides scientific reports and analyses to the Institute's grant and contract programs; and (10) administers programs to broaden participation by minorities in cancer-related research and training activities and to enhance the effectiveness of programs in cancer treatment and control in reaching the minority community and other historically underserved segments of the general population.

Dated: August 28, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–22203 Filed 9–6–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a teleconference meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council in September, 1995.

A portion of the meeting will be open and include a roll call, general announcements and a discussion of review procedures.

The meeting will also include the review, discussion, and evaluation of grant applications and contract proposals. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 522b(c) (3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Ms. Deloris Winstead, Committee Management Specialist, CSAT National Advisory Council, Rockwall II Building, room 8A141, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment National Advisory Council.

Meeting Date: September 27, 1995.

Place: Center for Substance Abuse Treatment Rockwall II Building, 6th Floor Conference Room, 5600 Fishers Lane, Rockville, Marlyand 20857.

Open: September 27, 1995 12:00 p.m. to 12:30 p.m.

Closed: September 27, 1995 12:30 p.m. to 1:30 p.m.

Contact: Majorie Cashion, Rockwall II Building, room 8A139, Telephone: (301) 443–8923 and FAX: (301) 480–3144.

Dated: September 30, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Service Administration.

[FR Doc. 95–22221 Filed 9–6–95; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Project Called Coquina Palms Townhomes Project, Located in the Central Beaches Area of Brevard County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Joseph A. Hill (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The permit would authorize the take of two families of the threatened Florida scrub jay, *Aphelocoma coerulescens coerulescens* in Brevard County, Florida, for a period of 10 years. The proposed taking is incidental to construction of a 71-unit townhome project, including the necessary infrastructure, on approximately 12 acres (Project). Within the Project, 1.7 acres are occupied by Florida scrub jays and will be permanently altered. The Project is called Coquina Palms Townhomes, and it is located on Wallace Avenue at the water tower site, within Section 30, Township 27 South, Range 38 East, in the central beaches area of Brevard County, Florida.

The Service also announces the availability of an environmental assessment and habitat conservation plan for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. Requests must be submitted in writing to be adequately processed. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before October 10, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–806150 in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The Florida scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub jay population has been reduced by at least half in the last 100 years. Surveys have indicated that two families of Florida scrub jays inhabit the Project site. Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens coerulescens* and exposure of the Applicant under section 9 of the Act. The second alternative is the proposed Project that is designed with a different mitigation strategy. A third alternative, the proposed action alternative is

issuance of the incidental take permit. This provides for restrictions of construction activity, purchase of offsite habitat for the Florida scrub jay, the establishment of an endowment fund for the offsite acquired habitat, and donation of additional offsite habitat. The HCP provides a funding mechanism for these mitigation measures.

Dated: August 30, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–22143 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of the Lepanthes Eltorensis and Cranichis Ricartii Recovery Plan Technical/Agency Draft for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for *Lepanthes eltorensis* and *Cranichis ricartii. Lepanthes eltorensis* and *Cranichis ricartii* are orchids endemic to mountain forests in Puerto Rico. *Lepanthes eltorensis* is currently known from five discrete sites in the palo colorado and dwarf forests of the Caribbean National Forest. *Cranichis ricartii* has been found at only three locations in the Maricao Forest of western Puerto Rico. Both species are threatened by forest management practices, hurricane damage, and collection. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 6, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Marelisa Rivera, Caribbean Field Office, PO. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera, Caribbean Field Office, PO. Box 491, Boquerón, P.R. 00622, Tel. 809–851–7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for *Lepanthes eltorensis* and *Cranichis ricartii,* which are endemic to mountain forests in Puerto Rico. *Lepanthes eltorensis* is an epiphytic orchid that is currently known from five discrete sites in the palo colorado and dwarf forests, all at elevations greater than 850 meters in the Caribbean National Forest. The species has been reported from several species of trees, all supporting abundant mosses and liverworth. *Cranichis ricartii* has been found at only three locations in the Maricao Forest of western Puerto Rico. The species has been found growing in humus of moist serpentine scrub forests of montane ridges at elevations above 680 meters. Both species are threatened by forest management practices, hurricane damage, and collection. The Service solicits review and comments from the public on this draft plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 29, 1995.

James P. Oland,

Field Supervisor.

[FR Doc. 95–22169 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–030–1330–00]

Notice of Emergency Closure of Public Lands; Storey County, NV

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that certain public lands in the vicinity of the Virginia City High School, Storey County, Nevada, are closed to the public. This closure is necessary to provide for public safety due to the recent collapse at the Osbiston mine shaft.

EFFECTIVE DATES: This closure goes into effect on August 28, 1995, and will remain in effect until the Carson City District Manager determines the closure is no longer needed.

FOR FURTHER INFORMATION CONTACT: John Matthiessen, Walker Resource Area Manager, Carson City District, 1535 Hot Springs Road, Carson City, Nevada 89706. Telephone (702) 885–6000.

SUPPLEMENTARY INFORMATION: The land affected by this closure is fenced and comprises less than one-quarter of an acre within the area described as:

Mount Diablo Meridian

T. 17 N., R. 21 E.,
Sec. 29, S½NE¼SE¼, N½SE¼SE¼.

The authority for this closure is 43 CFR 8364.1. Any person who fails to comply with a closure order is subject to arrest and fines and/or imprisonment not to exceed 12 months in accordance with applicable provisions of 18 USC 3571. This closure applies to all persons excluding (1) public officials and emergency and law enforcement personnel engaged in official business and (2) any person expressly authorized in writing by the Carson City District Manager to enter the closed area.

A map of the closed area is posted in the Carson City District Office.

Dated: August 28, 1995.

John O. Singlaub,

District Manager, Carson City District.

[FR Doc. 95–22102 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–HC–M

[OR 51998, OR 52165, OR 52166; OR–080–05–1430–01: G5–207]

Realty Action; Proposed Modified Competitive Sale

August 25, 1995.

The Notice of Realty Action published in the July 27, 1995, edition of the **Federal Register** (60 FR 38571) is hereby amended as follows:

The appraised fair market value of the three parcels is as follows:

Willamette Meridian, Oregon

T. 7 S., R. 3 W.,
Sec. 18, Lot 3 (OR 51998)—$67.50
Sec. 18, Lot 4 (OR 52165)—$207.00
Sec. 18, Lot 5 (OR 52166)—$171.00

Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306, prior to 11 a.m. on Wednesday, September 27, 1995.

All other conditions of the notice remain in effect.

John Bacho,

Marys Peak Area Manager.

[FR Doc. 95–22100 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–33–M

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 49 N., R. 63 W., accepted August 17, 1995
T. 50 N., R. 68 W., accepted August 17, 1995
T. 48 N., R. 69 W., accepted August 17, 1995
T. 50 N., R. 69 W., accepted August 17, 1995
T. 47 N., R. 71 W., accepted August 17, 1995
T. 42 N., R. 72 W., accepted August 17, 1995
T. 25 N., R. 74 W., accepted August 17, 1995
T. 46 N., R. 76 W., accepted August 17, 1995
T. 47 N., R. 76 W., accepted August 17, 1995
T. 45 N., R. 77 W., accepted August 17, 1995
T. 46 N., R. 77 W., accepted August 17, 1995
T. 12 N., R. 78 W., accepted August 17, 1995
T. 18 N., R. 78 W., accepted August 17, 1995
T. 16 N., R. 84 W., accepted August 17, 1995

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: August 29, 1995.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 95–22098 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Notice of Public Meetings

SUMMARY: The National Seashore, working cooperatively with the public and with other agencies, will devise three separate management plans tailored to unique problems and needs at each of three sites: the William Floyd Estate in Mastic Beach, the Wilderness Area of Fire Island National Seashore (from Smith Point west to Watch Hill), and the western end of the Seashore (from Watch Hill to the Fire Island Lighthouse).

DATES: Although interested parties are invited to attend any or all of these initial preliminary planning meetings, those specifically interested in one area of the park may choose to attend only the meeting for that area. Those interested in deer management for the Wilderness Area plan can meet at the Patchogue Library, in Meeting Room B, at 7 P.M. on September 12. Those interested in the William Floyd Estate can attend a meeting at the Property Owners Association Club House at 31 Neighborhood Road at 7 P.M. on September 14. Those interested in the western end of Fire Island can attend a meeting at the Ocean Beach Community Center, at Ocean Beach on Fire Island, a 7 P.M. on September 23.

ADDRESSES: Inquiries on these meeting dates should be submitted to the Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772, telephone (516) 289–4810.

SUPPLEMENTARY INFORMATION: As at many locations in the Northeast, increasing populations of white-tailed deer are causing concern about impacts to the natural areas of the Seashore along with various kinds of impacts within the communities that border Seashore property. To devise the safest, most practical, and least disruptive plans, the Seashore is seeking the input of all parties affected by the issue, such as Fire Island and Mastic Beach communities and public land managers. For example, both the Robert Moses State Park and the Smith Point County Park (both of which are located on Fire Island) will be invited to participate in the planning process. In addition, other interested members of the public will be needed to form task groups for each management plan.

At each meeting, members of the National Seashore's resource management staff will explain the planning process to be used. The criteria for the formation of task groups will be determined, and general time frames for the planning process will be established. It will be the charge of the task groups to actually begin to define the problem, set deer management objectives and develop alternatives and a recommended alternative for deer management for each of the three sites.

The National Seashore will use the objectives and alternatives developed by the task group to create its draft deer management plan and environmental assessment. The Environmental Assessment will analyze the impact of any management actions which the park may take.

For further information, please contact the superintendent at 516–289–4810 or by writing to: Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York, 11772.

Jack Hauptman,

Superintendent.

[FR Doc. 95–22113 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–70–M

Missouri National Recreational River Advisory Group

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Thursday, September 28, 1995; 1:00 p.m.

ADDRESSES: Niobrara State Park, Group Lodge, Niobrara, Nebraska Agenda topics include:

1. Discussion of the most recent changes to the draft recreational river study and recommendations for changes to the study.

2. Selection of a preferred alternative.

3. Presentation by the Corps of Engineers on the Master Water Control Manual update.

4. The opportunity for public comment and proposed agenda, date, time, and location of the next Advisory Group meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplish the agenda for the meeting, the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The Advisory Group was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the Recreational River. The Missouri National Recreational River is the 39-mile free flowing segment of the Missouri from Fort Randall Dam to the vicinity of Springfield in South Dakota.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, 402–336–3970.

Dated: August 28, 1995.

William W. Schenk,

Field Director.

[FR Doc. 95–22226 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–70–P

Sleeping Bear Dunes National Lakeshore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (P.L. 92–463).

MEETING DATE AND TIME: Friday, October 20, 1995; 9:30 a.m. until 12 noon.

ADDRESSES: Lake Township Hall, 5153 Scenic Drive, Honor, Michigan.

The agenda for the meeting consists of the Chairman's welcome; minutes of the previous meeting; statement of purpose; public input; update on park activities; old business; new business; public input; next meeting date; adjournment. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by the law that established the Sleeping Bear Dunes National Lakeshore, Public Law 91–479. The purpose of the commission, according to its charter, is to advise the Secretary of the Interior with respect to matters relating to the administration, protection, and development of the Sleeping Bear Dunes National Lakeshore, including the establishment of zoning by-laws, construction, and administration of scenic roads, procurement of land, condemnation of commercial property, and the preparation and implementation of the land and water use management plan.

FOR FURTHER INFORMATION CONTACT: Ivan Miller, Superintendent, 9922 Front Street, Empire, Michigan 49630, 616–326–5134.

Dated: August 28, 1995.

William W. Schenk,

Field Director, Midwest Region.

[FR Doc. 95–22227 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–371]

In the Matter of: Certain Memory Devices With Increased Capacitance and Products Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 10:00 a.m. on September 18, 1995, in Courtroom B (room 111), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: August 31, 1995.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 95–22234 Filed 9–6–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–364]

Certain Miscellaneous Products; Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Addition to scope of investigation and request for written submissions.

EFFECTIVE DATE: September 1, 1995.

SUMMARY: In response to a request from the United States Trade Representative (USTR), the Commission has expanded the scope of its investigation No. 332–364, Certain Miscellaneous Products: Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin, to include probable effects advice on a second list of proposed modifications to the North American Free Trade Agreement (NAFTA) rules of origin. The Commission's confidential report, which will contain advice on two lists of proposed modifications, will be submitted to the USTR on September 29, 1995.

FOR FURTHER INFORMATION: Information may be obtained from David Lundy, Office of Industries (202–205–3439) or Donita Marakovits, Office of Industries (202–205–3430); and on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal (202–205–1810).

Background

Chapter 4 and Annex 401 of the NAFTA, which entered into force on January 1, 1994, contain the rules of origin for application of the tariff provisions of the NAFTA to trade in goods.

Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 of the Act is that the President obtain advice regarding any proposed modification in the Rules contained in Annex 401 of the Act from the United States International Trade Commission.

The Commission was requested by the USTR, in his letter received on July 17,

1995, to provide advice on the probable effect of the proposed modifications to the rules of origin that were attached to the letter. The Commission instituted investigation No. 332–364, Certain Miscellaneous Products: Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The letter requested that the advice be forwarded to the USTR by September 15, 1995.

The Commission received a second letter from the USTR on August 31, 1995 requesting similar advice on a second set of proposed modifications, which was included as an attachment to the letter. The Commission will provide advice in response to both letters in one confidential report, which will be forwarded to the USTR by September 29, 1995. Copies of both sets of proposed modifications, which cover certain goods described in Chapters 1 through 97 of the Harmonized Tariff Schedule of the United States, are available from the Office of the Secretary at the Commission or from the Commission's Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Written Submissions

No public hearing is being scheduled in connection with the second set of proposed modifications. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on September 20, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: September 1, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–22233 Filed 9–6–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 369X)]

Burlington Northern Railroad Company—Abandonment Exemption—in Big Stone and Traverse Counties, MN

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.78-mile line of railroad between milepost 40.00 near Beardsley and milepost 46.78 near Browns Valley, in Big Stone and Traverse Counties, MN.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 7, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by September 18, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 27, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Assistant General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 12, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 31, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22214 Filed 9–6–95; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203.

Comments on the following assessment are due 15 days after the date of availability:

AB–12 (Sub-No. 151X), Southern Pacific Transportation Co.—Abandonment Exemption—in Ventura County, CA. EA available 8/25/95.

AB–417 (Sub-No. 1X), Central New York Railway Corporation - Abandonment of its line of railroad in Oneida, Herkimer and Otsego Counties, New York. EA available 8/25/95.

AB–3 (Sub-No. 126X), Missouri Pacific Railraod Company—Abandonment Exemption—In Caddo Parish, Louisiana (Good Roads Lead). EA available 9/1/95.

Comments on the following assessment are due 30 days after the date of availability: None.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22215 Filed 9–6–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1733–95]

Special Filing Instructions for ABC Class Members; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice; correction of form number.

SUMMARY: On Friday, July 7, 1995, the Immigration and Naturalization Service (the Service) published a notice at 60 FR 35424–35430, entitled ''Special Filing Instructions for ABC Class Members.'' In that notice the Service provided special instructions for class members eligible for asylum benefits under the settlement agreement reached in *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991). That notice document 95–16771, erroneously referenced the Form I–855, *ABC* Change of Address Form.

Accordingly, on page 35424, under ''Supplementary Information:'' the entry for ''Form I–855'' where it is listed in the second, third and fourth paragraphs, should have read ''Form M–426.''

Dated: August 31, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–22222 Filed 9–6–95; 8:45 am]

BILLING CODE 4410–10–M

National Institute of Corrections

Announcement of Programs, Services, and Training

The National Institute of Corrections (NIC), U.S. Department of Justice, has published its Annual Program Plan—Fiscal Year 1996. The document describes the technical assistance, programs, and services to be available to the corrections field during the next fiscal year, which begins on October 1, 1995, and ends September 30, 1996.

A separate document, the NIC Schedule of Training Services for Fiscal Year 1996, describes the training programs and services to be provided by NIC for state and local corrections practitioners.

Both documents contain relevant application forms and may be obtained by contacting the National Institute of Corrections, 320 First Street, NW, Washington, D.C. 20534 (telephone: 202–307–3106 x144, fax 202–307–3361), or the NIC Longmont, Colorado, offices at 1960 Industrial Circle, Suite A, Longmont, Colorado, 80501 (telephone 303–682–0382, fax 303–682–0469). Both documents are also available on Internet. Connect to the Department of Justice gopher server, gopher.usdoj.gov. From the menu, select the National Institute of Corrections, then select the desired document. Application forms are not included in the Internet version of the Annual Program Plan.

Larry B. Solomon,

Acting Director.

FR Doc. 95–22099 Filed 9–6–95; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–085)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that ACO, Inc., a corporation of the State of Oklahoma, has requested an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,171,822, entitled ''LOW TOXICITY HIGH TEMPERATURE PMR POLYIMIDE.'' This patent is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, NASA Langley Research Center.

DATES: Responses to this Notice must be received by November 6, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (804) 864–3521.

Dated: August 30, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–22213 Filed 9–6–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Seeks Qualified Candidates for Advisory Committee on Reactor Safeguards

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for résumés.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is looking for qualified candidates for possible appointment to its Advisory Committee on Reactor Safeguards (ACRS). There are three openings expected on the Committee in 1996. One or two openings may be filled by reappointment of incumbents.

ADDRESSES: Submit résumés to: Ms. Jude Himmleberg, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR APPLICATION MATERIALS, CALL: 1–800–952–9678. Please refer to Announcement Number 95–1000.

SUPPLEMENTARY INFORMATION: The ACRS was established by Congress to provide the Commission with independent expert advice on matters related to regulatory policy and the safety of existing and proposed nuclear power plants. The Committee work currently emphasizes safety issues associated with the operation of more than 100

nuclear units in the United States and technical and policy issues related to evolutionary and passive standard plant designs.

The ACRS membership includes individuals from national laboratories, academic and research institutions, industry, and consulting engineering firms who possess specific technical expertise along with a broad perspective in addressing safety concerns.

The members of the ACRS are selected from a variety of engineering and scientific disciplines such as nuclear power plant operations, nuclear engineering, mechanical engineering, electrical engineering, chemical engineering, metallurgical engineering, structural engineering, materials science, and instrumentation and process control systems. At this time, candidates are being sought with specific expertise in the areas of nuclear power plant operations and instrumentation and process control systems.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear safety matters, and the ability to apply one's skills to solve problems. Additionally, the Commission considers the need for specific expertise in relationship to current and future tasks, availability of candidates to serve, and possible conflicts of interest. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with varying views so that the membership on the Committee will be fairly balanced terms of the point of views represented and the functions to be performed by the Committee.

Because conflict of interest regulations restrict the participation of members actively involved in the regulated aspects of the nuclear industry, the degree and nature of any such involvement will be considered. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment to the Committee. This may result in the candidate being required to divest himself or herself of securities issued by nuclear industry entities, or discontinue or limit involvement in NRC or industry-funded research contracts or grants, based on a determination of possible conflict of interest.

Copies of résumé describing the educational and professional background of the candidate, including any special accomplishments, professional references, current address, and telephone number should be provided. All qualified candidates will receive full consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 50–100 days per year to Committee business. Applications will be accepted until November 24, 1995.

Dated: August 31, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–22191 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–820]

Release of United Nuclear Corporation, Wood River Junction Site For Unrestricted Use and Removal From the Site Decommissioning Management Plan—Finding of No Significant Impact and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission has prepared an environmental assessment (EA) related to the release of the United Nuclear Corporation (UNC) Wood River Junction Site and the termination of Special Nuclear Materials License No. SNM–777, Docket No. 70–820.

On the basis of this EA, the NRC has concluded that the environmental impacts that could be caused by the proposed action would not be significant and do not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The UNC site was listed in the NRC's Site Decommissioning Management Plan, but has now been removed.

Results of the radiological surveys and analyses performed indicate that, after remedial actions, residual radioactive material in building surfaces and in soils at the site is less than the criteria found in the NRC's ''Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material,'' August 1967. However, non-radiological onsite groundwater contamination will be monitored on a continuing basis by the State of Rhode Island Department of Environmental Management and UNC. NRC concludes that further remedial action is not required, and that the site is suitable for unrestricted use with regard to any radiological hazards regulated by NRC under the authority of the Atomic Energy Act of 1954, as amended.

As noted in the Action Plan (57 FR 13389), this is the final action of the NRC on the UNC site. NRC will not require any additional decommissioning in response to future NRC criteria or standards, except in the event that additional contamination, or non-compliance with the decommissioning plans approved by NRC is found, indicating a significant threat to public health and safety. Non-compliance would occur if the licensee had not complied with an approved decommissioning plan, or had provided false information.

The NRC hereby provides notice of an opportunity for a hearing on the termination of the license under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The licensee, United Nuclear Corporation, Inc., 67 Sandy Desert Road, Uncasville, CT 06382; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the NRC's ''Informal Hearing Procedures for Adjudications in Material Licensing Proceedings'' in 10 CFR Part 2, Subpart L.

For further details with respect to this action, see the EA and other documents related to this proposed action which are available for public inspection and copying at the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20555. For additional information, contact Jack Parrott, NRC Project Manager for the UNC site at (301) 415–6700 or Mail Stop T–8F37, Washington, DC 20555.

Dated at Rockville, Maryland this 9th day of August, 1995.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–22183 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Notice of Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Washington Public Power Supply System (the licensee) to withdraw its May 10, 1993, and supplement dated May 21, 1993, application for an amendment to Facility Operating License No. NPF–21 for operation of the Nuclear Project No. 2, located in Benton County, Washington.

The proposed amendment would have revised Section 6 (Administrative Controls) of the Technical Specifications (TS) to modify the composition, organizational assignments, and reporting relationship of the personnel performing the Independent Safety Engineering Group (ISEG) function in the current Nuclear Safety Assurance Division (NSAD). Also, the change would have modified the title of the Quality Assurance (QA) member of the Plant Operations Committee (POC) to reflect the new QA organization.

The Commission had previously issued a Notice of Consideration of Issuance of this amendment published in the **Federal Register** on August 18, 1993 (58 FR 43937). However, by letter dated September 8, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 10, 1993, and supplement dated May 21, 1993, and the licensee's letter dated September 8, 1993, which withdrew the application for license amendment.

The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 29th day of August 1995.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22184 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket 70–27]

Finding of No Significant Impact and Notice of Opportunity for a Hearing, Renewal of Special Nuclear Material License SNM–42, Babcock & Wilcox Company, Naval Nuclear Fuel Division, Lynchburg, VA

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Material License SNM–42 for the continued operation of the Babcock & Wilcox (B&W) Naval Nuclear Fuel Division (NNFD) and Lynchburg Technology Center (LTC) in Lynchburg, Virginia.

Summary of the Environmental Assessment

Identification of the Proposed Action:

B&W has requested the renewal of Special Nuclear Material License SNM–42 for the NNFD and LTC for a period of 10 years. In 1994, the NRC approved the consolidation of all activities authorized under LTC's License SNM–778 into NNFD's License SNM–42.

The B&W facility is located on a 212-hectare (525-acre) site in the northeastern corner of Campbell County, approximately 8 km (5 miles) east of Lynchburg, Virginia. This site is located in a generally rural area, consisting primarily of rolling hills with gentle slopes, farmland, and woodlands. The NNFD/LTC coexists on the site with the B&W Fuel Company plant which is separately licensed by the NRC. The combined NNFD/LTC facility is centrally located on the site with the main manufacturing complex contained in a 7.7-hectare (19-acre) fenced area and the LTC complex contained in a 5.5-hectare (13.6-acre) area for a combined total of 13.2 hectares (32.6 acres).

With this renewal, the combined NNFD/LTC activities will continue. The licensed activities include:

- The fabrication of unirradiated, highly enriched uranium into complete core assemblies for nuclear reactor fuel components for the U.S. Navy propulsion program and other government agencies, as well as university and other research reactors.
- The recovery of process uranium from scrap material.
- The continuation of existing research and development operations and non-nuclear process control research.
- The availability of analytical services for commercial power plants.
- The decontamination of reactor related hardware for inspection and evaluation.

The Need for The Proposed Action

The NNFD operation primarily supports the U.S. Navy propulsion program including fuel loading and subsequent refueling of ship reactors. The demand for this operation will continue in order to maintain at least the present fleet operation. If the operation of the NNFD is discontinued, another facility will have to be used in order to meet the national security needs of the U.S. Navy. In addition, this facility provides nuclear fuel modules to U.S. Department of Energy contractors and other research institutions. The LTC performs research and development necessary to create new products and processes, along with examining and improving those of the present generation.

Denial of license renewal for the NNFD/LTC facility would require that similar activities be undertaken at another site.

Environmental Impacts of the Proposed Action

Renewal of the combined NNFD/LTC license, involves a balance of positive and negative impacts. The positive impacts include contribution to national security, lessening of dependence on fossil fuels, and lessening of the negative environmental impacts related to production and utilization of fossil fuels. The negative impacts include releases of radioactive materials in the various environmental media associated with facility operation.

For the proposed action, renewal of the combined NNFD/LTC license, the continued handling of materials and conduct of operations at the facility poses a potential impact to the environment and public health and safety. For normal operations, the impact is related to the release of low levels of toxic or radioactive materials to the environment over extended periods of time. For accident conditions, the

hazard may involve release of higher concentrations of materials over relatively short periods of time.

The nonradioactive gaseous emissions from the combined NNFD/LTC are nitrogen oxides and fluoride compounds released from the process buildings and combustion products released from the steam plant. The state-issued air quality permit for the facility calls for the NO_X concentration at the site boundary to meet National Ambient Air Quality Standards (NAAQS). It has been determined that a maximum sector annual average NO_X concentration is approximately 0.8 percent of the NAAQS limit for NO_X. Consequently, it is concluded that NO_X emissions produce an insignificant environmental impact (NRC, 1991). The maximum hydrogen fluoride (HF) site boundary concentration is estimated as 0.04 μg/m^3. This concentration is approximately 1 percent of the time weighted average threshold limit value (TLV) proposed for workers by the American Conference of Governmental Industrial Hygienists (ACGIH) (ACGIH, 1986). Consequently, no significant impacts are expected.

Potential surface water impacts associated with operation of the combined NNFD/LTC include disruption of flow of the James River due to withdrawals and degradation of water quality of the river due to contaminant releases. The design capacity for withdrawal by the B&W facility is 0.02 m^3/s (0.67 ft^3/s). To date, this use of the James River by the B&W facility has had no adverse impact on the James River flow rate. The flow rates associated with future operations are expected to be similar or less than the historical flows; no additional impact is expected.

Degradation of surface water quality is prevented by enforcement of release limits and monitoring programs mandated under the facility National Pollution Discharge Elimination Systems (NPDES) permit. LTC liquid discharges are a small part of the combined discharges, which are monitored under this permit. NPDES permit conditions were exceeded twice during the 1989 through 1993 period. In the first instance, the discharge load for fluoride was exceeded during September 1993. In the second instance, the permit level for fecal coliform was exceeded at an internal monitoring point during July 1994 but was within limits at the final release monitoring point. This infrequent exceedance of NPDES levels does not indicate occurrence of a significant environmental impact.

Potential groundwater impacts include drawdown of the water table in the vicinity of facility wells and degradation of groundwater quality due to uncontrolled leakage to the subsurface soils. The B&W withdrawals of groundwater in the area of the James River are small in comparison to the capacity of the wells and the groundwater system.

There are no discharges of waste waters to ponds that could result in groundwater contamination from proposed operations except for those ponds that are used to manage the flow rate of discharges into the James River. The groundwater does have high levels of trichloroethylene (TCE) contamination from previous leaks which have been identified and eliminated.

On September 27, 1991, the Environmental Protection Agency (EPA) Region III issued a Final Order of Consent (Docket RCRA–III–050–CA) under Section 3008(h) of the Resource Conservation Reauthorization Act (RCRA), as amended. The Consent Order specified that B&W perform interim measures to prevent or relieve immediate threats to human health or the environment, perform a RCRA field investigation (RFI) to delineate the nature and extent of any releases of past raw products or wastes, and to perform a corrective measures study (CMS) to identify and evaluate alternatives for corrective action (B&W, 1995b).

On April 17, 1995, the draft RFI report was completed and submitted to EPA Region III. The RFI report identified three groundwater plumes which were contaminated with TCE, tetrachloroethylene (PCE), and related degradation constituents above the drinking water limit of 0.005 parts per million (ppm). The largest plume (Plume A) is located beneath the NNFD plant, extending 884 m (2,900 feet) from the upper road on the southwest portion of the site northeast to the James River. Plume A has a maximum width 365 m (1,200 feet), an approximate area of 28 hectares (70 acres), and an average concentration of 0.1 ppm TCE. The TCE source areas for plume A are the former TCE storage tank location where the maximum groundwater contamination is 145 ppm TCE, and a former zirconium chip burning area near the James River where the maximum groundwater contamination is 44.3 ppm TCE (B&W, 1995b).

The second largest plume (Plume C) is located beneath the Commercial Nuclear Fuel Plant (CNFP), extending 503 m (1,650 feet) from the upper side of the CNFP plant north towards the James River. Plume C has a maximum width of 190 m (625 feet), an approximate area of 10 hectare (24 acres) and an average concentration of 0.01 ppm TCE. The TCE source area for plume C is the former TCE storage tank location, and the maximum groundwater contamination is 0.397 ppm TCE (B&W, 1995b).

The third largest plume (Plume B) is located on the western portion of the site where the former uranium recovery building was buried. Plume B has a maximum length of 229 m (750 feet), a maximum width of 90 meters (300 feet), an approximate area of 2 hectares (5 acres), and an average concentration of 0.1 ppm TCE and 0.1 ppm PCE. The exact TCE and PCE source areas for plume B are unknown, but are most likely due to past waste disposal practices in the building disposal area. The maximum groundwater contamination is 3.4 ppm TCE and 58.6 ppm PCE. Upon EPA Region III approval of the RFI report, B&W will proceed with the CMS, where alternatives for corrective action will be evaluated (B&W, 1995b).

All but two of the underground tanks installed at the site have been removed and so the potential for accidental contamination of the groundwater is reduced. Remediation plans are being prepared for the cleanup of the TCE plume. The continued operation of the combined NNFD/LTC is not expected to result in any additional negative impact on the local groundwater.

Operation of the NNFD and LTC may pose risks to public health and safety due to release of radioactive material under normal operational or accident conditions. Radioactive materials released from the NNFD and LTC may reach the public through a variety of transport pathways contributing to both internal and external exposures. For atmospheric releases; internal exposures may occur through inhalation of radioactive material dispersed in the air or ingestion of crops and animal products which come in contact with radioactive material deposited from the air. External exposures may occur through direct radiation from an airborne plume or from particulates deposited onto the ground from the plume. For liquid releases, internal exposures from ingestion of water or irrigated crops may occur. External exposures from recreational activities, including swimming and boating may occur. For atmospheric releases, potentially exposed members of the public considered in the analysis include a maximally exposed individual located at the site boundary and the population out to a distance of 80 kilometers (50 miles). In order to

provide a conservative evaluation of potential liquid pathway impacts, the analysis assumes that a maximally exposed individual downstream of the facility and the surrounding population obtain drinking water and irrigation water from the James River.

The NNFD releases radioactive material to the atmosphere from approximately 27 stacks while the LTC releases radioactive material from 2 stacks. The NNFD releases are primarily uranium while the LTC releases are mixed fission products, including H–3 and Kr-85. For internal exposures, uranium is the dominant radionuclide; inhalation exposures are greater than ingestion exposures, and the lung is the controlling organ.

Low-level liquid radioactive waste from the NNFD and the LTC are processed through the Waste Treatment Facility. The system effluent is monitored and released to the James River. Releases attributable to the NNFD are primarily uranium while those from the LTC are primarily tritium.

NRC regulations (10 CFR 20.1301) require that total effective dose equivalent (TEDE) for members of the public not exceed 1.0×10^{-3} Sv (100 mrem) per year. In addition, EPA regulations (40 CFR Part 190) require that for routine releases to the general environment, the annual dose equivalent not exceed 2.5×10^{-4} Sv (25 mrem) to the whole body, 7.5×10^{-4} Sv (75 mrem) to the thyroid, and 2.5×10^{-4} Sv (25 mrem) to any other organ (EPA, 1977). For releases to the atmosphere, EPA regulations (40 CFR Part 61) require that the annual effective dose equivalent not exceed 1.0×10^{-4} Sv (10 mrem) (EPA, 1991). Doses associated with NNFD and LTC operations are dominated by releases to the atmosphere. For the maximally exposed individual, TEDE is estimated as 2.4×10^{-7} Sv (0.024 mrem) while the largest dose to a tissue is estimated as 2.0×10^{-6} Sv (0.2 mrem) to the lung. The doses are small fractions of the limits established by the NRC and EPA and indicate that facility operations will have insignificant impact on public health and safety. Because conservative assumptions were used in the analysis, actual doses are expected to be lower.

The NNFD and LTC handle materials which could pose a risk to public health and safety if released during accidents. Prior NRC analysis of operation of the NNFD considered accidents including criticality, fire, and flood (NRC, 1978). This prior analysis is supplemented by consideration of the research and development, analytical, and decontamination operations conducted at the LTC. The initial step in the accident analysis is auditing of hazardous materials and potentially hazardous activities present or conducted at the facility. Other than radioactive materials, the LTC does not contain significant inventories of potentially hazardous materials. In addition, the facility does not fabricate or convert materials in any continuous process. Thus, the handling and examination of fuel assemblies and the management of effluents associated with these operations are the activities which may pose a risk to the public health and safety.

The NNFD conducts an environmental monitoring program which includes sediment, soil, vegetation, surface water, air, and groundwater media at 20 locations on or near the facility. The program is intended to identify trends in concentrations or accumulation of uranium or other contaminants in the environment. Action levels have been established for each media to provide a basis for response to potential problems. Actions triggered by exceedance of an action level may include resampling of the area, performance of isotopic analysis, investigation of the source of contamination, elimination of the source of contamination, or termination of operations pending identification of a method for reduction of contaminant levels. Environmental monitoring results are reviewed as part of the ALARA program.

The NRC staff has reviewed the location of the environmental monitoring program sampling points, the frequency of sample collection, and the trends of the sampling program results in conjunction with environmental pathway and exposure analysis and concluded that the monitoring program provides adequate protection of public health and safety.

Alternatives to the Proposed Action

Implementation of the license renewal alternative involves continued operation of the facility at levels consistent with past practice for both the NNFD and LTC. Data and analysis presented in this Environmental Assessment updates and supplements the data and analysis presented in an Environmental Assessment (NRC, 1991) prepared earlier in the license renewal process. No new major construction or introduction of new processes is contemplated. The nature of the manufacturing, research, and waste management operations is summarized in this section. The system description presented in this section is adapted from material contained in the prior B&W Environmental Assessment (NRC, 1991) and license renewal application (B&W, 1995a).

The alternative of denial of license renewal for the B&W combined NNFD/LTC facility at the Lynchburg, Virginia site implies cessation of manufacturing and commencement of decontamination and decommissioning (D&D) of the facility. Decontamination and decommissioning activities would be substantially the same as those described for the license renewal alternative in Section 2.1 of this environmental assessment. However, since the fuel utilization requirements of the naval propulsion program and the university training and research programs would remain unchanged, selection of this alternative implies transfer of fuel production activities to a new site.

Agencies and Persons Consulted

- Virginia State Health Department, Bureau of Radiological Health.
- Virginia Department of Environmental Quality.

—Mixed Waste Issues Enforcement Branch
—Water Control
—Air Quality
—West Central Regional Office
—Enforcement

- Virginia Labor Market Area Office, Virginia Employment Commission.
- City of Lynchburg, Economic Development Office.
- Environmental Protection Agency, RCRA Enforcement Branch, Region 3.
- Appomatax County Administrator.

Other sources used in the preparation of the EA include the following:

Babcock & Wilcox, 1995a, License Renewal Application, SNM–42, Naval Nuclear Fuel Division, Lynchburg, VA, February 1995.

Babcock & Wilcox, 1995b, Supplemental Information to NRC, April 1995.

Babcock & Wilcox, 1991, Environmental Report, Naval Nuclear Fuel Division, Lynchburg, VA, August 1991.

Babcock & Wilcox, 1989, National Pollution Discharge Permit Application, VA0003697, September 27, 1989.

Biological Monitoring, Inc., 1989, Final Year End Report for On-Site Effluent Toxicity Studies and Biological Studies of the James River Performed in August and September 1989, Prepared for Babcock & Wilcox.

U.S. Nuclear Regulatory Commission, 1991, Environmental Assessment for Renewal of Special Nuclear Material License No. SNM–42, Docket No. 70–27 Naval Nuclear Fuel Division, Lynchburg, VA, August 1991.

U.S. Nuclear Regulatory Commission, 1986, Environmental Assessment for Renewal of Material License No. SNM–778, Docket No. 70–824, Lynchburg Research Center, Lynchburg, VA, December 1986.

U.S. Nuclear Regulatory Commission, 1984, Environmental Impact Appraisal for Babcock & Wilcox Company, Naval Nuclear Fuel Division, Docket No.70–27. Renewal of Special Nuclear Material License No. SNM–42, Lynchburg, VA, March 1984.

Conclusion

The NRC staff concludes that the environmental impacts associated with the proposed license renewal for continued operation of B&W's NNFD/LTC facility are expected to be insignificant.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License SNM–42. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); and on the licensee (Babcock & Wilcox Company, Naval Nuclear Fuel Division, Lynchburg, Virginia); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings.''

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e.,health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 30th day of August 1995.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 95–22186 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al.; Vogtle Electric Generating Plant, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–84, issued to the Georgia Power Company, et al. (the licensee), for operation of the Vogtle Electric Generating Plant (VEGP, Vogtle), Units 1 and 2, located at the licensee's site in Burke County, Georgia.

The proposed amendments, requested by the licensee in a letter dated May 1, 1995, would represent a full conversion from the current Technical Specifications (TS) to a set of TS based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April, 1995. NUREG–1431 was developed through working groups composed of NRC staff members and industry representatives and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the TS. As part of this submittal, the licensee has applied the criteria contained in the Commission's Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors of July 22, 1993, to the current Vogtle TS, and, using NUREG–1431 as a basis, developed a proposed set of improved TS for Vogtle. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change which became effective on August 18, 1995 (60 FR 36953).

The licensee has categorized the proposed changes to the existing TS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes, and less restrictive changes.

Non-technical, administrative changes were intended to incorporate human-factors principles into the form and structure of the improved plant TS so that they would be easier to use for plant operations personnel. Administrative changes are editorial in nature or involve the reorganization or reformatting of requirements without affecting technical content or operational requirements. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information which must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices.

Relocated changes, those current TS requirements which do not satisfy or fall within any of the four criteria specified in the Commission's policy statement, may be relocated to appropriate licensee-controlled documents. The licensee's application states that such requirements will be relocated from the TS to administratively controlled documents such as the Final Safety Evalution Report. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. These changes reduce the number of current TS requirements but the actual commitment to continue to perform the requirement will be unchanged upon implementation of the improved TS.

The licensee's proposed improved TS include certain more restrictive requirements than are contained in the current TS, which are either more conservative than corresponding requirements in the current TS, or are additional restrictions that are contained in NUREG–1431 but are not contained in the current TS. Examples

of more restrictive requirements include: placing a limiting condition for operation (LCO) on plant equipment that is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

Less restrictive changes are those where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the improved Standard Technical Specifications. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design was reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431 and thus provides a basis for these revised TS.

These administrative, relocated, more restrictive and less restrictive changes to the requirements of the current TS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the changes described above, the licensee proposed certain changes to the current TS that are both less restrictive and are not within the scope of application for conversion to the guidance of NUREG–1431. All of the differences will be reviewed by the NRC staff and a determination will be made regarding the approval or disapproval of each item as a part of this licensing action. Specifically, the licensee identified the following instances where their submittal varied from the provisions of NUREG–1431.

Shutdown margin requirements for Mode 2 with K_{eff} <1.0 are deleted. The applicability of the TS requirements for shutdown bank insertion limits, the requirement to verify a nonindicating rod position immediately after movement of more than 24 steps, and the required actions and surveillance requirements for quadrant power tilt ratio are revised.

With regard to reactor trip system (RTS) instrumentation, revisions are made to: (1) Three NUREG–1431 surveillances based on Vogtle operating practices and vendor recommendations; (2) notes 1 and 2 to NUREG–1431 LCO 3.3.1 required actions for Condition T (one RTS channel inoperable); (3) the NUREG–1431 surveillance requirements for the P–7 interlock; (4) the completion time for required actions with one intermediate range neutron flux channel inoperable (LCO 3.3.1 Condition F); and, (5) the Applicable Modes or other specified conditions for the RTS Interlocks P–7, P–8, P–9, P–10, and P–13.

For the Engineered Safety Features Actuation System instrumentation, the surveillance intervals for the Channel Operational Test of the refueling water storage tank level Low-Low signal for Semi-Automatic Switchover to Containment Emergency Sump function and the surveillance interval for the Channel Operational Test of the low Reactor Coolant System (RCS) T_{avg} function are increased from monthly to quarterly.

For the RCS, the surveillance interval for the pressurizer heater capacity is revised from 92 days to 18 months. Also, the completion time for depressurizing the RCS in the event of an inoperable cold overpressure protection system is revised from 8 hours to 12 hours, and the requirements for performing RCS water inventory balances are revised. The lift setpoints for the residual heat removal suction relief valves, the RCS vent capacity for cold overpressure protection, and the pressurizer safety valve lift settings are moved to the Bases of the improved TS.

For the Emergency Core Cooling System, the requirements for seal water injection flow is revised to locate the limits for seal injection flow to the Bases. Also, the Mode 4 requirements are revised.

For containment systems, the current allowed outage time for the containment spray and cooling systems is revised from 72 hours to 14 days, and the air lock door interlock mechanism surveillance frequency is revised from the current frequency of 6 months to 18 months. An allowance to open the 14-inch purge valves for maintenance testing is added.

For other plant systems, the Condensate Storage Tank LCO is revised consistent with a planned design modification that will result in two 100% capacity tanks. The surveillance requirement to operate the Piping Penetration Area Filtration and Exhaust System (PPAFES) monthly for ≥10 continuous hours is revised to operate for ≥15 minutes and the heater capacity verification is deleted. The Completion Time to reduce the Power Range Neutron Flux High Trip setpoints is increased from 4 hours to 12 hours. The currently licensed footnote in the Control Room Emergency Filtration System (CREFS) LCO that requires Train B CREFS to be started whenever a CREFS train must be placed in service to comply with Actions is deleted. A Note is added to the current LCO for the engineered safety feature room coolers and the safety-related chiller system providing an exception to the LCO for surveillance testing.

For electrical systems, several revisions to the LCO for AC Sources—Operating were proposed to support the addition of a new Standby Auxiliary Transformer as a Unit 1 and Unit 2 common offsite circuit. Also, the diesel generator accelerated test frequency requirements in the AC Sources—Operating LCO are relocated outside of the TS.

Regarding administrative controls, the Ventilation Filter Testing Program is revised consistent with the proposed change in the Plant Systems Chapter for the deletion of the heater capacity test for the PPAFES. The reference to the ASTM standard in Paragraph 5.5.13.c is deleted.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 10, 1995, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board

Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow, Director, Project Directorate II–2: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated May 1, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 31st day of August 1995.

For the Nuclear Regulatory Commission.

L. A. Wiens,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22185 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Open Meeting of the Intergovernmental Policy Advisory Committee for Trade

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The September 22, 1995 meeting of the Intergovernmental Policy Advisory Committee will be open to the public. The meeting will include a review and discussion of current issues of U.S. trade policy.

DATES: The meeting is scheduled for September 22, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Sheraton City Center Hotel, 1143 New Hampshire Avenue, N.W., Washington, D.C., from 11 a.m. to 2 p.m. unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Clayton Parker, Director of Intergovernmental Affairs, Office of the United States Trade Representative, Executive Office of the President at (202) 395–6120.

Jennifer Hillman,

Acting United States Trade Representative.

[FR Doc. 95–21735 Filed 9–6–95; 8:45 am]

BILLING CODE 3190–01–M

Notice of Meeting of the Advisory Committee for Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the September 14, 1995 meeting of the Advisory Committee for Trade Policy and Negotiations will be held from 10 a.m. to 2 p.m. The meeting will be closed to the public.

SUMMARY: The Advisory Committee for Trade Policy and Negotiations will hold a meeting on September 14, 1995 from

10 a.m. to 2 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: The meeting is scheduled for September 14, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Indian Treaty Room at the Old Executive Office Building, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–22096 Filed 9–6–95; 8:45 am]

BILLING CODE 3190–01–M

Country-by-Country Reallocations of the Tariff-Rate Quota for Sugar

AGENCY: Office of the United States Trade Representatives.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of two sets of country-by-country reallocations of part of the in-quota quantity of the tariff-rate quota for imported sugar for the period that ends September 30, 1995.

EFFECTIVE DATES: June 13 and July 13, 1995, respectively.

ADDRESSES: Inquiries may be mailed or delivered to Tom Perkins, Senior Economist, Office of the U.S. Trade Representative, 600 17th Street N.W., Office of Agricultural Affairs (Room 421), Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Tom Perkins, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: On June 13, 1995, and again on July 13, 1995, the United States Trade Representative determined and announced that countries to which an allocation had been made of the in-quota quantity under the sugar tariff-rate quota (TRQ) provided for in Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) would not be filling their allocations and that the amount of this shortfall would be reallocated to other supplying countries or areas. This notice documents these earlier announcements. Following is information on the quota shortfall and reallocation amounts for the June 13 and July 13 announcements, respectively.

June 13, 1995, Reallocation

On June 13, 1995, the United States Trade Representative determined and announced that five countries would not be filling their allocations under the tariff-rate quota for sugar. These countries are: Barbados, Congo, Gabon, Papua New Guinea, and St. Kitts & Nevis. The amount of the total shortfall is 92,427 metric tons (101,883 short tons). The shortfall amount for each country is: Barbados 23,763 MT, Congo 14,584 MT, Gabon 21,840 MT, Papua New Guinea 13,999 MT, and St. Kitts & Nevis 18,241 MT.

This amount has been reallocated among supplying countries in the following amounts (metric tons, raw value):

Country	Reallocated amount
Argentina	4,035
Australia	7,788
Belize	1,032
Bolivia	750
Brazil	13,606
Colombia	2,252
Costa Rica	1,407
Dominican Republic	16,515
Ecuador	1,032
El Salvador	2,440
Fiji	845
Guatemala	4,504
Guyana	1,126
Honduras	938
India	750
Jamaica	1,032
Malawi	938
Mauritius	1,126
Mozambique	1,220
Nicaragua	1,971
Panama	2,721
Peru	3,848
Philippines	12,668
South Africa	2,158
Swaziland	1,502
Taiwan	1,126
Thailand	1,314
Trinidad-Tobago	657
Zimbabwe	1,126
Total	92,427

July 13, 1995, Reallocation

On July 13, 1995, the United States Trade Representative determined and announced that five countries would not be filling their allocations of the tariff-rate quota for sugar, including the amounts reallocated to them in the June 13, 1995, reallocation announcement. Accordingly, their remaining quota balances are being reallocated. This is in addition to the reallocation announced on June 13, 1995.

The five countries which will not utilize their remaining quota balances are: India, Madagascar, the Philippines, Taiwan, and Thailand. The total amount of the 1994/1995 sugar TRQ reallocated for purposes of the July 13 reallocation is 17,923 metric tons (19,757 short tons). The following amounts are reallocated from each country (in MT raw value): India, 750 MT; Madagascar, 2,066 MT; the Philippines, 12,668 MT; Taiwan, 1,126 MT; and Thailand, 1,314 MT.

This amount has been reallocated among supplying countries in the following amounts (metric tons, raw value):

Country	Reallocated amount
Argentina	522
Australia	1,009
Belize	134
Bolivia	97
Brazil	1,762
Columbia	292
Costa Rica	183
Dominican Republic	2,139
Ecuador	134
El Salvador	316
Fiji	109
Guatemala	583
Guyana	146
Honduras	121
Jamaica	134
Malawi	121
Mauritius	146
Mozambique	158
Nicaragua	255
Panama	353
Papua New Guinea	8,005
Peru	499
South Africa	279
Swaziland	195
Trinidad-Tobago	85
Zimbabwe	146
Total	17,923

Barbados, India, Madagascar, Philippines, Taiwan and Thailand were also excluded from this reallocation based on reported lack of shipment intentions for the June 13 reallocation quantity.

The reallocation of the 17,923 MT includes reinstating to Papua New Guinea 8,005 MT of the 13,999 MT reallocated from it in the June 13 announcement. This amount was reinstated due to a confirmed delivery contract for quota entry into the United States by September 30, 1995.

Note: In both announcements, the reallocation amount is zero for the ten minimum quota-holding countries including: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay, since the previously announced minimum allocation for these countries already exceeds the base import quota plus any reallocation adjustment.

Both reallocations apply to the period ending September 30, 1995, only.

Jennifer A. Hillman,

Acting United States Trade Representative.

[FR Doc. 95–21945 Filed 9–6–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36168; File No. SR–Amex–94–38]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1, 2, 3, 4 and 5 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

I. Introduction

On September 12, 1994, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) (''Section 19(b)'') of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish uniform rules for the listing and trading of broad-based stock index (''index'' or ''stock index''), currency (''currency'') and currency index (''currency index'') warrants (collectively ''warrants''). Notice of the proposed rule change appeared in the **Federal Register** on December 20, 1994.[3] One comment letter was received in response to the proposal.[4]

The Exchange subsequently filed five Amendments to the proposal.[5] Amendment No. 1 brought several of Amex's proposed rules and policies into conformity with those previously filed by other markets. Amendment No. 2 primarily addressed surveillance and margin issues related to the trading of warrants. Amendment No. 3 addressed the issues of settlement methodology, currency index warrant margin and reporting requirements. Amendment No. 4 deletes a transaction reporting requirement which will be revised and incorporated into the Exchange's surveillance procedures and also makes minor changes requested by the staff. Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised at or prior to expiration. This order approves the proposal, as amended.

II. Description of the Proposal

The Amex proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.[6] Section 106 of the Amex Company Guide, Currency and Index Warrants, would be amended to provide uniform listing criteria for broad-based stock index, currency, and currency index warrants.[7] First, issuers would be expected to exceed minimum issuer listing standards. In particular, the Exchange proposes that issuers be required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million and provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded through NASDAQ exceeds 25% of the issuer's net worth.[8]

Second, the proposal, as amended requires that unexercised in-the-money warrants provide for automatic exercise on their expiration date or on or promptly following their delisting date (if the issue is not listed upon another organized securities market). Third, the proposal provides that for warrant offerings where U.S. stocks constitute 25% or more of the index value (''domestic index''), issuers shall use opening prices (''a.m. settlement'') for U.S. stocks to determine index warrant settlement values on the final determination of settlement value date (''valuation date'') for the warrants as well as during the two business days prior to the valuation date.[9] Fourth, Section 106 has been amended to provide that foreign country securities or American Depositary Receipts (''ADRs'') thereon that are not subject to a comprehensive surveillance sharing agreement with the Exchange and that have less than 50% of their global trading volume (in dollar value) within the U.S., shall not represent more than 20% of the weight of the index.[10]

The Exchange also proposes adding a provision to Section 106 which is designed to assist in the surveillance of index warrant trading. Specifically, the Exchange will require issuers of stock index warrants to notify the Exchange of any early exercises. For domestic index warrants, this notice must occur no later than 4:30 p.m. (New York time) on the day that the settlement value for the warrants is determined.[11]

Rule 462 (''Rule 462''), the Amex margin rule, is being amended to apply the current customer margin requirements for broad based stock index and currency options to stock index, currency and currency index warrants. Thus, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, but with a minimum of ten percent of the index value. Short sales of currency warrants will follow the margin requirements currently applicable to listed currency options. Specifically, the Exchange proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall be subject to a margin level of 100% of the current

[1] 15 U.S.C. § 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35086 (Dec. 12, 1994), 59 FR 65561.

[4] *See* Letter from Paul M. Gottlieb, Seward & Kissel, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 (''Comment Letter'' or ''Seward & Kissel Letter'').

[5] *See* Letters from William Floyd-Jones, Assistant General Counsel, Amex, to Michael Walinskas, SEC, dated May 12, 1995 (''Amendment No. 1''), May 12, 1995 (''Amendment No. 2''), June 26, 1995 (''Amendment No. 3''), July 28, 1995 (''Amendment No. 4'') and August 16, 1995 (''Amendment No. 5'').

[6] The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may only be exercised during a specified period before expiration).

[7] Sections 106 (b)–(d), which require issuances of warrants to: have a term of one to five years; have a minimum public distribution of 1,000,000 warrants together with a minimum of 400 public holders and an aggregate market value of $4,000,000 and; be cash-settled in U.S. dollars would remain unchanged.

[8] *See* Amendment No. 1. The Exchange amended this provision in response to the Seward & Kissell Letter.

[9] *See* Amendment No. 3. The Exchange amended its proposal in response to the Seward & Kissell Letter and notes that a warrant based upon a domestic U.S. stock index may be settled using closing prices (''p.m. settlement'') for the underlying stocks at all times except for the warrant's valuation date and the two business days immediately preceding the valuation date.

[10] *See* Amendment No. 1.

[11] *See* Amendment No. 2.

market value of each such warrant plus a four percent ''add-on.'' [12] The margin required on currency index warrants would be an amount as determined by the Exchange and approved by the Commission.[13] The Exchange also proposes that its stock index, currency and currency index warrant customer margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the Exchange proposes that index, currency and currency index warrants may be offset with either warrants or Options Clearing Corporation (''OCC'') issued options on the same index, currency or currency index, respectively. Furthermore, the Exchange has proposed that Rules 462(d)(2) (F) and (G), to the extent that such rules concern spread and straddle positions in warrants, be subject to a one year pilot basis.[14] Finally, proposed Rule 462 will also permit the use of escrow receipts to cover a short call position in a broad-based stock index warrant.[15]

The Exchange proposes that Part VI of its rules, Trading of Stock Index and Currency Warrants, be applicable solely to the trading of warrants. Proposed Rule 1100 provides that, unless the context otherwise requires or a specific rule in Part VI applies, the provisions of the Constitution and all other rules and policies of the Exchange apply to trading of such securities. Furthermore, proposed Rule 1100 provides that warrants listed on the Exchange prior to SEC approval of this filing shall continue to be governed by those provisions of the Exchange's rules that were applicable to such warrants at the time of their listing. Finally, prior to trading index, currency or currency index warrants, the Exchange will distribute circulars to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in warrants.

Proposed Rule 1101 states that no member or member organization shall accept an order from a customer for the purchase or sale of warrants unless the customer's account has been approved for options trading pursuant to Exchange Rule 921. Accordingly, the Exchange will rescind Commentaries .01 and .02 to Rule 411, its current suitability standard applicable to warrants, which currently provide that the Exchange ''recommends'' that index and currency warrants only be sold to investors whose accounts have been approved for options trading. Furthermore, proposed Rules 1102–1105 require that the option rules pertaining to suitability, discretionary account trading, supervision of accounts and customer complaints be applied to warrants.

Proposed Rule 1106 requires approval by a Compliance Registered Options Principal of all advertisements, sales literature and educational material issued by a member organization pertaining to warrants. The rule further requires Exchange approval of all advertisements and educational materials pertaining to warrants.

Proposed Rule 1107 provides that position limits for stock index warrants on the same index with original issue prices of ten dollars or less will be fifteen million warrants covering all such issues. In addition, with respect to warrants on the Standard & Poor's MidCap 400 Index, the position limit will be seven and one half million warrants covering all such issues, provided the original issue prices of the warrants are not greater than ten dollars. The rule provides that warrants with an original issue price of greater than ten dollars will be weighted more heavily than warrants with an original issue price of ten dollars or less in calculating position limits.[16] The rule also gives the Exchange the authority to require the liquidation of a position in stock index warrants that is in excess of the position limits set forth in the rule, and Commentary V to the rule provides procedures for allowing limited exceptions to the position limits.

Proposed Rule 1108 provides for exercise limits on stock index warrants analogous to those found in stock index options and states that such limits are distinct from any exercise limits that may be imposed by the issuers of stock index warrants. Accordingly, no member may exercise a long position in warrants over a five consecutive day period in excess of the permissible position limit.

In order to facilitate its review of compliance with position and exercise limits, the Exchange has proposed Rule 1110 which establishes reporting requirements for large warrant positions. Under the terms of the Rule, members will be required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position of 100,000 warrants overlying the same index, currency or currency index. For purposes of this rule, the Exchange proposes that long positions inputs be combined with short positions in call warrants, and that short positions inputs be combined with long positions in call warrants.[17] Finally, proposed Rule 1109 requires that the trading halt provisions in Rule 918C(b) shall be applied to the trading of stock index warrants.

Upon Commission approval of the foregoing rule amendments, the Exchange proposes that it will only file rule changes for specific stock index warrant issuances where there is no corresponding option or warrant on the same underlying stock index already listed on a national securities exchange or included for quotation on NASDAQ. Accordingly, when a listed option overlies a particular broad based index, the Exchange proposes it be allowed to list warrants on that index without further Commission review and approval pursuant to Section 19(b) of the Act, as long as the listing complies with the warrant listing standards as approved in this Order.[18]

III. Comments Received

The Commission received one letter in response to its request for comments on the Amex proposal.[19] The Comment Letter was generally supportive of the Amex's proposal, however, it recommended several changes in the proposed regulatory structure applicable to stock index, currency and currency index warrants. The Comment Letter was submitted on behalf of the Firms, all of whom are represented to be major participants in the issuance, underwriting and trading of warrants. Because the proposed regulatory regime applicable to warrants will, to some extent, be based upon the rules governing standardized options, the

[12] *See* Amendment No. 3. Consistent with the treatment of options on foreign currencies, warrants on the Canadian Dollar will be subject to a one percent ''add-on''. The margin required on any other foreign currency would be subject to approval by the Commission. *See infra* note 28.

[13] *See infra* note 28.

[14] Three months prior to the expiration of the pilot program, the Exchange will submit a report to SEC staff analyzing the price relationship between listed warrants and options on similar stock indexes. *See* Amendment No. 1. The Exchange has also requested no action relief from the Commission in order to permit certain short positions in stock index call and put warrants to be treated as covered for margin purposes.

[15] *See* Amendment No. 1. The Exchange notes that this treatment is consistent with the rules that allow for the use of escrow receipts to cover a short call position in broad-based stock index options.

[16] For example, if an investor held 100,000 warrants based upon the Standard & Poor's 500 Index offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000.

[17] *See* Amendment Nos. 1 and 3.

[18] *See infra* note 28.

[19] See supra note 4. The Seward & Kissel Letter was submitted on behalf of PaineWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc. (collectively the ''Firms'').

Comment Letter states that the Firms' comments are driven, in part, by the fact that fundamental differences exist between warrants and standardized options which necessitate disparate regulatory treatment in certain situations.[20]

First, the Comment Letter suggested amending the Issuer Listing Standards to eliminate the 25% test or, in the alternative, to adopt hedging and/or netting standards designed to more accurately reflect issuer-specific risk.[21] Because warrants are sold by means of a registration statement, the Firms believe that adequate disclosure of the amount of an issuer's outstanding securities could be included in the prospectus. Furthermore, the Comment Letter points out that issuers of warrants are traditionally subject to outside evaluation by certain credit rating agencies, which should assist investors in determining undue issuer credit risk. Finally, the Firms do not believe the 25% test bears any resemblance to an issuer's risk exposure since exposure fluctuates with market changes at any given time and also because the proposal provides no recognition for offsetting hedges or for warrants subject to netting.

In response to the Seward & Kissel Letter's comments respecting issuer listings standards, the Amex amended the filing to add an alternative issuer qualification criteria.[22] Under the new criteria, an issuer will be required to either: (a) have a minimum tangible net worth of $250 million; or (b) meet the existing criteria (*i.e.*, tangible net worth of $150 million and meet the 25% test).

The Comment Letter also recommended allowing the use of p.m. settlement for all American-style warrants exercised anytime except 48 hours prior to expiration, at which time a.m. settlement would be required. According to the Comment Letter, unlike with listed options (where OCC is the issuer and runs a balanced book), a warrant issuer must hedge its exposure to maintain offsetting positions. Upon early exercise of the warrants, the issuer that has hedged its exposure will have to take action to ''unwind'' the portion of its hedge relating to the exercised warrants. The Firms believe that requiring a.m. settlement on the first day after an investor exercises the warrant will place additional market risk upon them due to the difficulty in managing the hedge. This increased hedging cost, the Firm's argue, could result in a higher issuance price for the warrant or could require that the warrant settlement value date be postponed an additional day, with warrant holders bearing additional market risk during this period.

In response to the Comment Letter, the Amex amended its filing to include a provision permitting p.m. settlement for stock index warrants except for a short period before expiration.[23] Under the terms of the amendment, stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the U.S. shall, by their terms, provide that, on valuation date, as well as for the two business days prior to valuation date, the value of the stocks traded primarily in the U.S. which underlie such warrants shall be determined by reference to the opening prices of such underlying U.S. securities. For example, if the valuation date for an issuance of index warrants occurs on a Friday, a.m. settlement must be utilized for warrants that are valued on the preceding Wednesday or Thursday, as well as on the valuation date.

Third, the Comment Letter recommended creating a special category of ''warrant eligible'' customers (separate and distinct from options eligibility criteria), who are authorized to trade warrants even if not approved to trade options. The Firms believe it is inappropriate to apply an options regulatory regime to warrants and that doing so may prevent institutional customers who are not permitted to purchase options products, yet who nevertheless meet all of the options eligibility criteria, from purchasing warrants. In this regard, the Firms propose to create a ''warrant eligible'' category with standards mimicking those currently required for options approved accounts. As such, ''warrant-approved'' accounts could purchase warrants, however, they could not purchase options or other products requiring options account approval. The Amex did not amend its filing in response to this comment.

Fourth, the Comment Letter urges the adoption of a rule permitting firms to approve for warrant trading those accounts managed by an investment adviser (''IA'') based upon the IA's representation concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the brokerage firms. The Amex has amended its proposal to allow member firms to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the member firm, where the managed account is for an institutional customer or the investment advisor account represents the collective investment of a number of persons. The Amex states that this will conform the handling of warrant accounts to the current practice with respect to listed options accounts.[24]

Finally, the Comment Letter addressed the proposed position limits applicable to warrants. Specifically, the Comment Letter noted that position limits for warrants would be set at levels that are approximately 75% of that allowed for similar broad-based indexes. The Comment Letter recommended establishing position limits for warrants that were equivalent to those established for listed options, allowing a hedge exemption similar to listed option procedures and providing a mechanism for specific waivers or exemptions of warrant position limits for hedgers, market-makers and broker-dealers comparable to the procedures in place for listed options. The Amex did not amend its filing in response to this comment.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[25] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing standards for broad-

[20] The Comment Letter lists several differences which it perceives exist between warrants and standardized options. Chief among these are: (1) Warrants are separately registered, unsecured obligations of their issuer while options are issued and guaranteed by the Options Clearing Corp. (''OCC''); (2) during the prospectus delivery period, warrant purchasers receive a product-specific prospectus while options customers receive an options disclosure document (''ODD'') at the time the account is opened; (3) each warrant creates a fixed number of outstanding warrants while there is theoretically no limit to the number of options that may be issued by OCC; and (4) warrants are traded on an exchange in a manner similar to stocks which, therefore, translates into superior price transparency than for listed options.

[21] As originally proposed, an issuer would have been required to have a tangible net worth of at least $150 million and the aggregate original issue price of all of a particular issuer's warrant offerings (combined with such offerings by its affiliates) that are listed on a national securities exchange or that are national market securities traded through NASDAQ may not exceed 25% of the issuer's net worth (''25% test).

[22] *See* Amendment No. 1.

[23] *See* Amendments No. 3 and 5.

[24] *See* Amendment No. 1.

[25] 15 U.S.C. § 78f(b)(5) (1982).

based stock index, currency and currency index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the Amex's proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The Amex's proposed generic listing standards for broadbased stock index warrants, currency and currency indexes set forth a regulatory framework for the listing of such products.[26] Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have a negative market impact. In addition, these standards should address the special risks to customers arising from the derivative products.[27] For the reasons discussed below, the Commission believes the Amex's proposal will provide it with significant flexibility to list index, currency and currency index warrants, without compromising the effectiveness of the Exchange's listing standards or regulatory program for such products.[28]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on a stock index, currency or currency index permits investors to participate in the price movements of the underlying assets, and allows investors holding positions in some or all of such assets to hedge the risks associated with their portfolios. The Commission further believes that trading warrants on a stock index, currency or currency index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

Warrants, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the Exchange's issuer listing standards that require an issuer to have either; (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency and currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants. Moreover, the alternative test addresses the Comment Letter's concerns on the 25% standard.

The Amex's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) (''domestic index warrants'') are required to utilize a.m. settlement for expiring warrants as well as during the last two business days prior to valuation date.[29] The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, in accordance with the Comment Letter's suggestions, the use of p.m. settlement except during the last two business days prior to a domestic index warrant's valuation date, as well as the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designing their products.[30] In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at

[26] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[27] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

[28] Issuances of warrants overlying a single currency may currently be listed for trading without a rule filing provided that the underlying currency is one of the original seven foreign currencies approved for options trading: the Australian Dollar, British Pound, Canadian Dollar, French Franc, German Mark, Japanese Yen, Swiss Franc and European Currency Unit. Issuances of currency warrants overlying any other foreign currency would require a rule filing pursuant to Section 19(b) of the Act. The Commission notes that currency index warrants may only be established without a further rule filing upon an index that has been previously approved by the Commission pursuant to a Section 19(b) filing. To date, the only currency index approved pursuant to Section 19(b) is an equal-weighted index comprised of the British Pound, Japanese Yen and German Deutsche Mark. *See* Securities Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399 (Dec. 30, 1992). Accordingly, any other currency index (as well as a broad-based stock index) not previously approved by the Commission would require approval pursuant to Section 19(b).

[29] Currency and currency index warrants are not limited to a.m. or p.m. settlement.

[30] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

settlement. Nevertheless, the Commission expects the Exchange to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the Amex has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with trading in these instruments, in accordance with Amex Rule 921, and that adequate disclosure of the risks of these products must be made to investors.[31] In addition, the Amex will apply the options rules for suitability, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the Amex has addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The Amex has adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index, currency and currency index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period. The Commission believes that this will ensure that certain information about the particular issuance and issuer is publicly available.

As noted above, the Comment Letter indicates that applying the options disclosure framework to warrants is inappropriate. However, the Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the Exchange circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

At this time, the Commission does not agree with the proposal contained in the Comment Letter to create a special ''warrant eligible'' classification of purchasers. As noted above, index, currency and currency index warrants are very similar to standardized options. They are so similar that a customer precluded from trading options should not avoid the restriction indirectly by being designated by Exchange rules as eligible for stock index, currency or currency index warrants. Nevertheless, as the range of exchange-traded derivative products increases, the SROs might consider in the future as to whether a new derivatives eligibility classification is appropriate.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard the Commission notes that the Exchange has developed adequate surveillance procedures for the trading of index and currency warrants. First, new issues of currency warrants will be subject to the Amex's existing surveillance procedures applicable to foreign currency warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses involving the warrant market and the underlying foreign currencies.[32]

Second, the Exchange has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[33] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the Exchange on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the Amex in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Third, the Exchange has developed adequate surveillance procedures to apply to foreign stock index warrants (*i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[34] The Commission believes that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement [35] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivative product and its underlying stocks.[36] Such agreements provide a necessary deterrent to manipulation because they facilitate the

[31] Pursuant to Amex Rule 921, all options approved accounts must receive an ODD, which discusses the characteristic and risks of standardized options.

[32] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987), and Securities Exchange Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988). The Commission notes that these surveillance procedures only apply to the issuance of warrants overlying one of the approved foreign currencies. *See supra* note 28. The issuance of warrants upon any other foreign currency would necessitate a Section 19(b) rule filing which, among other things, details applicable surveillance procedures.

[33] In addition, the Commission notes that issuers will be required to report to the Exchange all trades to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the Exchange to monitor the unwinding activity to determine if it was effected in a manner that violates Exchange or Commission rules.

[34] Each prior issuance of a foreign stock market based index warrant is subject to specific surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[35] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[36] The ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

availability of information needed to fully investigate a potential manipulation if it were to occur.[37] In this regard, the Amex will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The Exchange has in place an effective surveillance agreement [38] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard available for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[39] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the Amex has no surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants, currency warrants and currency index warrants will not adversely affect the U.S. securities markets or foreign currency markets. First, with respect to currency and currency index warrants, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active over-the-counter market also exists in options, forwards and swaps for foreign currencies. This minimizes the possibility that Exchange listed warrants would be used to manipulate the spot currency markets. In addition, the surveillance procedures for these products should allow the Exchange to detect and deter potential manipulation involving currency warrants and currency index warrants.

Second, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously determined to be broad-based in the context of index options or warrant trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad based stock index options or warrants will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes the Amex's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Third, the Exchange has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the Exchange to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve on a permanent basis the proposed spread margin rules.[40]

Fourth, the Amex has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.[41] Contrary to the views expressed in the Comment Letter, the Commission believes that in the absence of trading experience with domestic index warrants, it would be imprudent to establish position limits for positions greater than those currently applicable to domestic stock index options on the same index.[42]

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards covering index, currency and currency index warrants will provide an appropriate regulatory framework for these products. These standards will also benefit the Exchange by providing them with greater flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index or a non-approved currency or currency index. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

The Commission finds good cause for approving Amendments No. 1, 2, 3, 4 and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** for the following reasons. As discussed below, the changes are either (1) minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other

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[37] In the context of domestic index warrants, the Commission notes that the U.S. exchanges are members of the Intermarket Surveillance Group (''ISG''), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[38] *See supra* note 35.

[39] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

[40] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the Exchange and approved by the SEC. *See* Amendment No. 4. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[41] The Commission notes that there are no position or exercise limits applicable to currency or currency index warrants, although reporting requirements do apply. Nevertheless, the Commission may review the need to establish foreign currency position limits if the size of the currency or currency index warrant market increases significantly.

[42] With respect to the Comment Letter's suggestion that a hedge exemption rule be established in order to allow participants to readily acquire exemptions from the Exchange as needed, the Commission does not believe that such an approach is appropriate at this time. The hedge exemption for index options was adopted after several years experience with index options trading. Until the SROs gain some experience with domestic index warrant trading, it is difficult to determine the need for a hedge exemption (*i.e.*, that speculative limits are insufficient to meet hedging needs).

markets; or (4) modifications to Exchange surveillance procedures. Accordingly, the amendments do not raise new significant regulatory issues or are responsive to prior comments. In order to enable the Exchange to list new index, currency or currency index warrants as soon as possible, the Commission believes it is necessary and appropriate to approve the amendments on an accelerated basis.

Amendment No. 1 makes several changes to the filing which are designed to bring it into conformity with the other options exchanges. It also revises Section 106 of the Company Guide, Currency and Index Warrants, in several respects to provide uniform issuer listing standards. The first two changes permit the use of p.m. settlement for domestic index warrants (except during the last 48 hours preceding valuation date) and provide an alternative issuer listing qualification criteria (as discussed above under *Issuer Listing Standards and Product Design*). The Commission notes that these changes were made in response to comments received from the Seward & Kissell Letter and further believes these changes provide added flexibility to issuers without compromising investor protection concerns.

Amendment No. 1 also revises Section 106 in two other respects: by limiting the number of foreign securities that may comprise an underlying stock index and by adding a provision requiring an issuer to notify the listing Exchange of early exercises of domestic index warrants. Taken together, the Commission believes these changes further strengthen the issuer listing standards and the Exchange's surveillance procedures to the benefit of warrant investors.

Amendment No. 1 also revises Rule 462 to provide that the proposed spread and straddle margin treatment for stock index warrants will be effected as part of a one year pilot program, and to provide that escrow receipts will be accepted to cover short positions in stock index warrants. The Commission notes that these changes conform the margin treatment afforded options and warrants and provide a basis for evaluating pricing correlations between warrants and options overlying the same index, currency or currency index.

Finally, Amendment No. 1 provides that the Exchange will distribute an information circular to its members upon new warrant listings and that it will permit member firms to accept an IA's representation concerning the options eligibility status of its customers, as described above. The Commission notes that both of these practices are consistent with the treatment of options and, therefore, raise no new or unique regulatory issues. Accordingly for the reasons discussed above relating to each proposed revision of the Amendment, the Commission believes it is appropriate to approve amendment No. 1 to the Exchange's proposal on an accelerated basis.

Amendment No. 2 primarily addresses surveillance related matters. In particular, it provides that issuers must report all hedge unwinding transactions related to the early exercise of domestic index warrants to the listing exchange by the business day following trade date (''T+1'').[43] Also, the Amendment requires issuers to notify the listing exchange of any early exercises of index warrants by 4:30 p.m. (New York time) on settlement date for the warrants. Amendment No. 2 also makes minor changes to Rule 462 to clarify which currencies are subject to a four percent ''add-on'' for margin purposes. The Commission believes these changes to the Amex's surveillance procedures strengthen the Exchange's monitoring of index warrants. Furthermore, the Commission believes this change to Rule 462 is minor and that it does not raise any new or unique regulatory issues. Accordingly, the Commission believes it is appropriate to approve Amendment No. 2 on an accelerated basis.

Amendment No. 3 to the proposal clarifies several issues relating to a.m. settlement, currency index warrant margin, previously issued warrants and position reporting for currency warrants. First, the Amendment clarifies in Amex Rule 106(e) that a.m. settlement will be used during the 48 hour period prior to expiration of index warrants. The Commission notes that this change simply codifies a provision the Amex previously agreed to in Amendment No. 2.[44] Second, the Amendment clarifies that the applicable margin level for currency index warrants will be a percentage as specified by the exchange and approved by the Commission. The Commission notes that this revision is consistent with the treatment afforded currency index options, where margin levels are established on a case by case basis. Third, the Amendment clarifies that warrants issued prior to the approval of these uniform listing and trading guidelines will continue to be subject to the rules applicable to them at the time of their listing. The Commission believes this ''grandfather clause'' ensures that the rules applicable to previously issued warrants will not change prior to their expiration, and therefore, that the establishment of uniform rules will have little impact on their pricing. Finally, the Amendment establishes that currency and currency index warrants will be subject to the same reporting levels as stock index warrants. The Commission notes that this revision helps to provide uniformity in the regulatory treatment of warrants. Furthermore, because currency and currency index warrants are not subject to position and exercise limits, the Commission believes that requiring investors to report to the Exchange when their holdings exceed specified levels should aid the Exchange in its monitoring for potential trading abuses involving currency and currency index warrants. Accordingly, the Commission believes it is appropriate to approve Amendment No. 3 on an accelerated basis.

Amendment No. 4 deletes a transaction reporting requirement which will be revised and incorporated into the Exchange's surveillance procedures and also makes other minor changes. As such, the Commission does not believe the Amendment raises any new or unique regulatory issues. Accordingly, the Commission believes it is appropriate to approve Amendment No. 4 on an accelerated basis.

Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised prior to expiration. Specifically, the Amendment clarifies that a.m. settlement will be required on valuation date as well as during the last two business days prior to an index warrant's valuation date. As discussed above, the Commission believes that the use of a.m. settlement during this period will help to ameliorate any potential price effects associated with expirations of derivative index products. Accordingly, the Commission believes it is appropriate to approve Amendment No. 5 on an accelerated basis. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments No. 1, 2, 3, 4 and 5 to the Amex's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, 2, 3, 4 and 5. Persons making written submissions should file six copies

[43] The Commission notes that Amendment No. 4 removes this transaction reporting requirement which will be incorporated into the Exchange's surveillance procedures.

[44] Amendment No. 5 subsequently changes the language of this provision to require a.m. settlement be used during the two business days prior to valuation date.

thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–Amex–94–38) is approved, as amended, with the portion of the rule change relating to spread margin treatment being approved on a one year pilot program basis ending August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95– 22107 Filed 9–6–95; 8:45 am]

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[Release No. 34–36169; File No. SR–CBOE–94–34]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1, 2, 3, 4 and 5 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

I. Introduction

On September 29, 1994, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish uniform rules for the listing and trading of broad-based stock index (''stock index'' or ''index''), currency (''currency'') and currency index (''currency index'') warrants (collectively ''warrants''). Notice of the proposed rule change appeared in the **Federal Register** on January 9, 1995.[3] One comment letter was received in response to the proposal.[4]

The Exchange subsequently filed five Amendments to the proposal. Amendment No. 1 (''Amendment No. 1'') brought several of CBOE's proposed rules and policies into conformity with those previously filed by other markets.[5] Amendment No. 2 (''Amendment No. 2'') imposes a reporting requirement for positions in currency and currency index warrants.[6] Amendment No. 3 (''Amendment No. 3'') addresses issues relating to settlement methodology, surveillance of issuer hedge transactions, early exercise notification and reporting requirements for index warrants.[7] Amendment No. 4 (''Amendment No. 4'') addresses surveillance issues related to the trading of index warrants.[8] Amendment No. 5 clarifies the settlement procedures for index warrant which are exercised at or prior to expiration.[9] This order approves the proposal, as amended.

II. Description of the Proposal

The CBOE proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.[10] This filing incorporates the results of numerous communications with the Commission staff and other exchanges, including comments contained in a letter from Sharon Lawson to Joanne Moffic-Silver dated January 28, 1993 (''Lawson letter''). This filing also makes certain changes in the listing criteria for stock index and currency warrants and makes clear that certain rules applicable to currency warrants would apply equally to currency index warrants.

Exercise and Position Limits

The Exchange is proposing position limits for stock index warrants that, in general, are approximately 75%, in terms of underlying dollar value, of the current position limits for index options. Accordingly, proposed Rule 30.35(a) provides that position limits for stock index warrants on the same index with original issue prices of ten dollars or less will be fifteen million warrants covering all such issues.[11] In addition, with respect to warrants on the Russell 2000 Index, the position limit will be twelve and one half million warrants covering all such issues, provided the original issue prices of the warrants are not greater than ten dollars. The rule provides that warrants with an original issue price of greater than ten dollars will be weighted more heavily than warrants with an original issue price of ten dollars or less in calculating position limits.[12]

Proposed Rule 30.35(d) also gives the Exchange the authority to require the liquidation of a position in stock index warrants that is in excess of the position limits set forth in the rule.[13]

Proposed Rule 30.35(b) also establishes exercise limits on stock index warrants which are analogous to those found in stock index options. The rule prohibits holders from exercising, within any five consecutive business days, long positions in warrants in excess of the base position limit established in Rule 30.35(a).

In order to facilitate its review of compliance with position and exercise limits, proposed rule 30.35(d) establishes reporting requirements for large warrant positions. Under the terms of the Rule, members will be required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position of 100,000 warrants overlying the same index, currency or currency index.[14] For

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[45] 15 U.S.C. § 78s(b)(2) (1988).

[46] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b-4 (1994).

[3] Securities Exchange Act Release No. 35178 (Dec. 29, 1994), 60 FR 2409.

[4] *See* Letter from Paul M. Gottlieb, Seward & Kissel, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 (''Comment Letter'' or ''Seward & Kissel Letter'').

[5] Letter from Janet Angstadt, Schiff Hardin & Waite, to Michael Walinskas, SEC, dated March 2, 1995.

[6] Letter from Timothy Thompson, CBOE, to Michael Walinskas, SEC, dated May 8, 1995.

[7] Letter from James R. McDaniel, Schiff Hardin & Waite, to Michael Walinskas, SEC, dated June 23, 1995.

[8] Letter from Janet Angstadt, Schiff Hardin & Waite, to Michael Walinskas, SEC, dated August 4, 1995.

[9] Letter from Janet Angstadt, Schiff Hardin & Waite, to Michael Walinskas, SEC, dated August 18, 1995.

[10] The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may be exercised only during a specified period before expiration).

[11] *See infra* note 47.

[12] For example, if an investor held 100,000 warrants based upon the Standard & Poor's 500 Index offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000.

[13] Proposed Rule 30.35(d) makes Rule 4.14 (Liquidation of Positions) applicable to index warrants.

[14] *See* Amendment No. 2. In the original filing, the CBOE proposed establishing a reportable limit for stock index warrants at 20,000 warrants. Amendment No. 2 extended the reporting

purposes of this rule, the Exchange proposes that positions on the same side of the market be aggregated together (*e.g.*, long positions in puts be combined with short positions in call warrants, and short positions in puts be combined with long positions in call warrants).[15]

Margin

The Exchange's proposed margin requirements for customers having positions in index warrants, currency index warrants and currency warrants are included in proposed new Rule 30.52. In general, the proposed margin requirements for long and short positions in stock index warrants are the same as margin requirements for positions in stock index options and the margin requirements for long and short positions in currency warrants are the same as those for corresponding currency options. Thus, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, but with a minimum of ten percent of the index value. Short sales of currency warrants will follow the margin requirements currently applicable to listed currency options. Specifically, the Exchange proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall each be subject to margin level of 100% of the current market value of each such warrant plus a four percent ''add-on.'' [16] The margin required on currency index warrants would be an amount as determined by the Exchange and approved by the Commission.[17] The Exchange also proposes that its stock index, currency and currency index warrant margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the Exchange proposes that index, currency and currency index warrants may be offset with either warrants or Options Clearing Corporation (''OCC'') issued options on the same index, currency or currency index, respectively. Furthermore, the Exchange has proposed that Rules 30.35(d)(i), (ii) and (iii), to the extent that such rules concern spread and straddle positions in warrants, be subject to a one year pilot basis.[18] Finally, proposed Rule 30.53(d)(iv) will permit the use of escrow receipts to cover a short position in a broad-based stock index warrant.[19]

CBOE believes that a broker-dealer carrying positions in warrants must bear in mind that special characteristics of warrants—such as pricing differences, the necessity of borrowing to make delivery on short sales, and the issuer credit risk associated with long warrants—may cause these margin requirements to be insufficient to fully cover the risk of such positions in certain circumstances, and broker-dealers must therefore be prepared to call for additional margin when appropriate. CBOE further believes that each exchange listing stock index, currency index or currency warrants should draw the attention of its member firms to this issue in connection with the adoption of these margin rules.

In accordance with the Lawson letter, the proposed rules would be applicable only to warrants issued after the effective date of this filing. Warrants issued prior to that date would remain subject to the rules in effect at the time of their listing.

Customer Protection

Modifications are proposed to Exchange Rule 30.50, Doing Business With the Public, to incorporate references to proposed new Rule 30.52. Proposed Rule 30.52(c) states that no member or member organization shall accept an order from a customer for the purchase or sale of warrants unless the customer's account has been approved for options trading pursuant to Exchange Rule 9.7. Accordingly, the Exchange will rescind Interpretation .02 to Rule 30.52, its current suitability standard applicable to warrants, which currently provides that the Exchange ''recommends'' that index and currency warrants only be sold to investors whose accounts have been approved for options trading. Appendix A to Chapter XXX, which is a cross-reference table to other rules of the Exchange that are applicable to securities otherwise covered in Chapter XXX, is being updated to reflect the applicability of certain options rules (*i.e.*, customer protection rules including, but not limited to, account supervision, suitability, etc.) to warrants:

Rule 4.13 Reports Related to Position Limits
Rule 4.14 Liquidation of Positions
Rule 9.2 Registration of Options Principals
Rule 9.6 Registration of Branch Offices
Rule 9.7 Account Approval Requirements
Rule 9.8 Supervision Requirements
Rule 9.9 Suitability Requirements
Rule 9.10 Discretionary Account Requirements
Rule 9.21 Requirements for Customer Communications
Rule 9.23 Record-keeping Requirements for Customer Complaints

Listing Criteria

The listing criteria for stock index warrants and currency warrants are being amended to reflect the comments contained in the Lawson letter and to make clear that they apply to currency index warrants. In particular, proposed Rule 31.5(E) (1) and (4) provide that issuers are required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded through NASDAQ exceeds 25% of the issuer's net worth.[20]

Second, proposed Rule 31.5(E)(6) requires that unexercised in-the-money warrants be automatically exercised on either the delisting date (if the issue is not listed upon another organized securities market) or upon expiration. Third, proposed Rule 31.5(E)(5) provides that for warrant offerings where U.S. stocks constitute 25% or more of the index value (''domestic index''), issuers shall use opening prices (''a.m. settlement'') for U.S. stocks to determine index warrant settlement values on the final determination of settlement value date (''valuation date'') as well as during the two business days

requirement to currency and currency index warrants at a level of 100,000 warrants (on the same side of the market). Finally, Amendment No. 3 proposed raising the reporting requirement for stock index warrants from 20,000 to 100,000 warrants (on the same side of the market).

[15] *See* Amendment Nos. 2 and 3.

[16] *See* Amendment No. 3. Consistent with the treatment of options on foreign currencies, warrants on the Canadian Dollar will be subject to a one percent ''add-on.'' The margin required on any other foreign currency would be subject to approval by the Commission. *See infra* note 34.

[17] *See infra* note 17.

[18] Three months prior to the expiration of the pilot program, the Exchange will submit a report to SEC staff analyzing the price relationship between listed warrants and options on similar stock indexes. *See* Amendment No. 1. The Exchange has also requested no-action relief from the Commission in order to permit certain short positions in stock index call and put warrants to be treated as covered for margin purposes.

[19] *See* Amendment No. 1. The Exchange notes that this treatment is consistent with the rules that allow for the use of escrow receipts to cover a short call position in broad-based stock index options.

[20] *See* Amendments No. 1 and 3. The Exchange amended this provision in response to the Seward & Kissell Letter.

prior to valuation date.[21] Fourth, Rule 31.5(E)(7) has been amended to provide that foreign country securities or American Depositary Receipts (''ADRs'') thereon that are not subject to a comprehensive surveillance sharing agreement with the Exchange and that have less than 50% of their global trading volume (in dollar value) within the U.S., shall not represent more than 20% of the weight of the index.[22] Finally, the Exchange proposes to add Rule 31.5(E)(8) in order to assist in the surveillance of index warrant trading. Specifically, the Exchange will require issuers of stock index warrants to notify the Exchange of any early exercises by no later than 3:30 p.m. (Chicago time) on the day that the settlement value for the warrants is determined.[23]

Trading Halts or Suspensions

Proposed new Rule 30.36 makes the provisions in Rule 24.7 concerning trading halts or suspensions in stock index options applicable to stock index warrants.

Specific Warrant Issues

Upon Commission approval of the foregoing rule amendments, the Exchange proposes that it will only file rule changes for specific stock index warrant issuances where there is no corresponding option or warrant on the same underlying stock index already listed on a national securities exchange or included for quotation on NASDAQ. Accordingly, when a listed option overlies a particular broad based index, the Exchange proposes it be allowed to list warrants on that index without further Commission review and approval pursuant to Section 19(b) of the Act as long as the listing complies with the warrant listing standards as approved in this Order.[24] Finally, prior to trading stock index or currency warrants, the Exchange will distribute circulars to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in warrants.

III. Comments Received

The Commission received one letter in response to its request for comments on the CBOE proposal.[25] The Comment Letter was generally supportive of the CBOE's proposal, however, it recommended several changes in the proposed regulatory structure applicable to stock index, currency and currency index warrants. The Comment Letter was submitted on behalf of the Firms, all of whom are represented to be major participants in the issuance, underwriting and trading of warrants. Because the proposed regulatory regime applicable to warrants will, to some extent, be based upon the rules governing standardized options, the Comment Letter states that the Firms' comments are driven, in part, by the fact that fundamental differences exist between warrants and standardized options which necessitate disparate regulatory treatment in certain situations.[26]

First, the Comment Letter suggested amending the issuer Listing Standards to eliminate the 25% test or, in the alternative, to adopt hedging and/or netting standards designed to more accurately reflect issuer-specific risk.[27] Because warrants are sold by means of a registration statement, the Firms believe that adequate disclosure of the amount of an issuer's outstanding securities could be included in the prospectus. Furthermore, the Comment Letter points out that issuers of warrants are traditionally subject to outside evaluation by certain credit rating agencies, which should assist investors in determining undue issuer credit risk. Finally, the Firms do not believe the 25% test bears any resemblance to an issuer's risk exposure since exposure fluctuates with market changes at any given time and also because the proposal provides no recognition for offsetting hedges or for warrants subject to netting.

In response to the Seward & Kissel Letters's comments respecting issuer listings standards, the CBOE amended the filing to add an alternative issuer qualification criteria.[28] Under the new criteria, an issuer will be required to either: (a) have a minimum tangible net worth of $250 million; or (b) meet the existing criteria (*i.e.*, tangible net worth of $150 million and meet the 25% test).

The Comment Letter also recommended allowing the use of p.m. settlement for all American-style warrants exercised anytime except 48 hours prior to expiration, at which time a.m. settlement would be required. According to the Comment Letter, unlike with listed options (where OCC is the issuer and runs a balanced book), a warrant issuer must hedge its exposure to maintain offsetting positions. Upon early exercise of the warrants, the issuer that has hedged its exposure will have to take action to ''unwind'' the portion of its hedge relating to the exercised warrants. The Firms believe that requiring a.m. settlement on the first day after an investor exercises the warrant will place additional market risk upon them due to the difficulty in managing the hedge. This increased hedging cost, the Firm's argue, could result in a higher issuance price for the warrant or could require that the warrant settlement value date be postponed an additional day, with warrant holders bearing additional market risk during this period.

In response to the Comment Letter, the CBOE amended its filing to include a provision permitting p.m. settlement for stock index warrants except for a short period before expiration.[29] Under the terms of the amendment, stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the U.S. shall, by their terms, provide that, on valuation date, as well as for the two business days prior to valuation date, the value of the stocks traded primarily in the U.S. which underlie such warrants shall be determined by reference to the opening prices of such underlying U.S. securities. For example, if the valuation date for an issuance of index warrants occurs on a Friday, a.m. settlement must be utilized for warrants that are valued on the preceding Wednesday or

[21] *See* Amendment No. 5. The Exchange amended its proposal in response to the Seward & Kissell Letter and notes that a warrant based upon a domestic U.S. stock index may be settled using closing prices (''p.m. settlement'') for the underlying stocks at all times except for the warrants valuation day and the two business days immediately preceding valuation date.

[22] *See* Amendment No. 1.

[23] *See* Amendment No. 3.

[24] *See infra* note 34.

[25] *See supra* note 4. The Seward & Kissel Letter was submitted on behalf of PainWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc. (collectively the ''Firms'').

[26] The Comment Letter lists several differences which it perceives exist between warrants and standardized options. Chief among these are: (1) warrants are separately registered, unsecured obligations of their issuer while options are issued and guaranteed by the Options Clearing Corp. (''OCC''); (2) during the prospectus delivery period, warrant purchasers receive a product-specific prospectus while options customers receive an options disclosure document (''ODD'') at the time the account is opened; (3) each warrant creates a fixed number of outstanding warrants while there is theoretically no limit to the number of options that may be issued by OCC; and (4) warrants are traded on an exchange in a manner similar to stocks which, therefore, translates into superior price transparency than for listed options.

[27] As originally proposed, an issuer would have been required to have a tangible net worth of at least $150 million and the aggregate original issue price of all of a particular issuer's warrant offerings (combined with such offerings by its affiliates) that are listed on a national securities exchange or that are national market securities traded through NASDAQ was not to exceed 25% of the issuer's net worth (''25% test).

[28] *See* Amendment No. 1.

[29] *See* Amendments No. 3 and 5.

Thursday, as well as on the valuation date.

Third, the Comment Letter recommended creating a special category of ''warrant eligible'' customers (separate and distinct from options eligibility criteria), who are authorized to trade warrants even if not approved to trade options. The Firms believe it is inappropriate to apply an options regulatory regime to warrants and that doing so may prevent institutional customers who are not permitted to purchase options products, yet who nevertheless meet all of the options eligibility criteria, from purchasing warrants. In this regard, the Firms propose to create a ''warrant eligible'' category with standards mimicking those currently required for options approved accounts. As such, ''warrant-approved'' accounts could purchase warrants, however, they could not purchase options or other products requiring options account approval. The CBOE did not amend its filing in response to this comment.

Fourth, the Comment Letter urges the adoption of a rule permitting firms to approve for warrant trading those accounts managed by an investment adviser (''IA'') based upon the IA's representation concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the brokerage firms. The CBOE has amended its proposal to allow member firms to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed account is not provided to the member firm, where the managed account is for an institutional customer or the investment advisor account represents the collective investment of a number of persons. The CBOE states that this will conform the handling of warrant accounts to the current practice with respect to listed options accounts.[30]

Finally, the Comment Letter addressed the proposed position limits applicable to warrants. Specifically, the Comment Letter noted that position limits for warrants would be set at levels that are approximately 75% of that allowed for similar broad-based indexes. The Comment Letter recommended establishing position limits for warrants that were equivalent to those established for listed options, allowing a hedge exemption similar to listed option procedures and providing a mechanism for specific waivers or exemptions of warrant position limits for hedgers, market-makers and broker-dealers comparable to the procedures in place for listed options. The CBOE did not amend its filing in response to this comment.

[30] *See* Amendment No. 1.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[31] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing standards for broad-based stock index, currency and currency index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the CBOE's proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The CBOE's proposed generic listing standards for broad-based stock index warrants, currency and currency indexes set forth a regulatory framework for the listing of such products.[32] Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leverage and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have a negative market impact. In addition, these standards should address the special risks to consumers arising from the derivative products.[33] For the reasons discussed below, the Commission believes the CBOE's proposal will provide it with significant flexibility to list index, currency and currency index warrants, without compromising the effectiveness of the Exchange's listing standards or regulatory program for such products.[34]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on a stock index, currency or currency index permits investors to participate in the price movements of the underlying assets, and allows investors holding positions in some or all of such assets

[31] 15 U.S.C. 78f(b)(5) (1982).

[32] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[33] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risk associated with their portfolios.

[34] Issuances of warrants overlying a single currency may currently be listed for trading without a rule filing provided that the underlying currency is one of the original seven foreign currencies approved for options trading: the Australian Dollar, British Pound, Canadian Dollar, French Franc, German Mark, Japanese Yen, Swiss Franc and the European Currency Unit. Issuances of currency warrants overlying any other foreign currency would require a rule filing pursuant to Section 19(b) of the Act. The Commission notes that currency index warrants may only be established without a further rule filing upon an index that has been previously approved by the Commission pursuant to a Section 19(b) filing. To date, the only currency index approved pursuant to Section 19(b) is an equal-weighted index comprised of the British Pound, Japanese Yen and German Deutsche Mark. *See* Securities Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399 (Dec. 30, 1992). Accordingly, any other currency index (as well as a broad-based stock index) not previously approved by the Commission would require approval pursuant to Section 19(b).

to hedge the risks associated with their portfolios. The commission further believes that trading warrants on a stock index, currency or currency index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

Warrants, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the Exchange's issuer listing standards that require an issuer to have either; (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency or currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants. Moreover, the alternative test addresses the Comment Letter's concerns on the 25% standard.

The CBOE's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) (''domestic index warrants'') are required to utilize a.m. settlement for warrants on valuation date as well as during the last two business days prior to valuation date.[35] The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, in accordance with the Comment Letter's suggestions, the use of p.m. settlement except during the last two business days prior to a domestic index warrant's valuation date, as well as the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designing their products.[36] In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at settlement. Nevertheless, the Commission expects the Exchange to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the CBOE has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with trading in these instruments, in accordance with CBOE Rule 9.7, and that adequate disclosure of the risks of these products must be made to investors.[37] In addition, the CBOE will apply the options rules for suitability, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the CBOE has addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The CBOE has adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index, currency and currency index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period. The Commission believes that this will ensure that certain information about the particular issuance and issuer is publicly available.

As noted above, the Comment Letter indicates that applying the options disclosure framework to warrants is inappropriate. However, the Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the Exchange circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

At this time, the Commission does not agree with the proposal contained in the Comment Letter to create a special ''warrant eligible'' classification of purchasers. As noted above, index, currency and currency index warrants are very similar to standardized options. They are so similar that a customer precluded from trading options should not avoid the restriction indirectly by being designated by Exchange rules as eligible for stock index, currency or currency index warrants. Nevertheless, as the range of exchange-traded derivative products increases, the SROs might consider in the future as to whether a new derivatives eligibility classification is appropriate.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard the Commission notes that the Exchange has developed adequate surveillance procedures for the trading of index and currency warrants. First, new issues of

[35] Currency and currency index warrants are not limited to a.m. or p.m. settlement.

[36] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

[37] Pursuant to CBOE Rule 9.7, all options approved accounts must receive an ODD, which discusses the characteristic and risks of standardized options.

currency warrants will be subject to the CBOE's existing surveillance procedures applicable to foreign currency warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses involving the warrant market and the underlying foreign currencies.[38]

Second, the Exchange has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[39] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the Exchange on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the CBOE in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Third, the Exchange had developed adequate surveillance procedures to apply to foreign stock index warrants (*i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[40] The Commission believes that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement[41] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivative product and its underlying stocks.[42] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur.[43] In this regard, the CBOE will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The Exchange has in place an effective surveillance agreement[44] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard available for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[45] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the CBOE has no surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants, currency warrants and currency index warrants will not adversely affect the U.S. securities markets or foreign currency markets. First, with respect to currency and currency index warrants, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active over-the-counter market also exists in options, forwards and swaps for foreign currencies. This minimizes the possibility that Exchange listed warrants would be used to manipulate the spot currency markets. In addition, the surveillance procedures for these products should allow the Exchange to detect and deter potential manipulation involving currency warrants and currency index warrants.

Second, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously determined to be broad-based in the context of index options or warrant trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad based stock index options or warrants will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes the CBOE's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Third, the Exchange has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the Exchange to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve

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[38] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987), and Securities Exchange Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988). The Commission notes that these surveillance procedures only apply to the issuance of warrants overlying one of the approved foreign currencies. *See supra* note 34. The issuance of warrants upon any other foreign currency would necessitate a Section 19(b) rule filing which, among other things, details applicable surveillance procedures.

[39] In addition, the Commission notes that issuers will be required to report to the Exchange all trades to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the Exchange to monitor the unwinding activity to determine if it was effected in a manner that violates Exchange or Commission rules.

[40] Each prior issuance of a foreign stock market-based index warrant is subject to specific surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[41] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[42] The ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

[43] In the context of domestic index warrants, the Commission notes that the U.S. exchanges are members of the Intermarket Surveillance Group (''ISG''), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[44] *See supra* note 41.

[45] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

on a permanent basis the proposed spread margin rules.[46]

Fourth, the CBOE has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.[47] Contrary to the views expressed in the Comment Letter, the Commission believes that in the absence of trading experience with domestic index warrants, it would be imprudent to establish position limits for positions greater than those currently applicable to domestic stock index options on the same index.[48]

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards covering index, currency and currency index warrants will provide an appropriate regulatory framework for these products. These standards will also benefit the Exchange by providing them with greater flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index or a non-approved currency or currency index. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

The Commission finds good cause for approving Amendments No. 1, 2, 3, 4 and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** for the following reasons. As discussed below, the changes are either (1) minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures. Accordingly, the amendments do not raise new significant regulatory issues or are responsive to prior comments. In order to enable the Exchange to list new index, currency or currency index warrants as soon as possible, the Commission believes it is necessary and appropriate to approve the amendments on an accelerated basis.

Amendment No. 1 makes several changes to the filing which are designed to bring it into conformity with the other options exchanges. First, it revises Rule 31.5(E) in several respects to provide uniform issuer listing standards. The first two changes provide an alternative issuer listing qualification criteria (as discussed above under *Issuer Listing Standards and Product Design*) and limit the number of foreign securities that may comprise an underlying stock index. The Commission notes that the first change was made in response to comments received from the Seward & Kissell Letter and further believes it will provide added flexibility to issuers without compromising investor protection concerns. The Commission believes the second change strengthens the issuer listing standards to the benefit of warrant investors.

Amendment No. 1 also revises Rule 462 to provide that the proposed spread and straddle margin treatment for stock index warrants will be effected as part of a one year pilot program, and to provide that escrow receipts will be accepted to cover short positions in stock index warrants. The Commission notes that these changes conform the margin treatment afforded options and warrants and provide a basis for evaluating pricing correlations between warrants and options overlying the same index, currency or currency index.

Finally, Amendment No. 1 provides that the Exchange will permit member firms to accept an IA's representation concerning the options eligibility status of its customers, as described above. The Commission notes this practice is consistent with the treatment of options and, therefore, raises no new or unique regulatory issues. Accordingly, for the reasons discussed above relating to each proposed revision of the Amendment, the Commission believes it is appropriate to approve Amendment No. 1, to the Exchange's proposal on an accelerated basis.

Amendment No. 2 establishes that currency and currency index warrants will be subject to reporting levels in the same manner as stock index warrants. The Commission notes that this revision helps to provide uniformity in the regulatory treatment of warrants. Furthermore, because currency and currency index warrants are not subject to position and exercise limits, the Commission believes that requiring investors to report to the Exchange when their holdings exceed specified levels should aid the Exchange in its monitoring for potential trading abuses involving currency and currency index warrants.[49] Accordingly, the Commission believes it is appropriate to approve Amendment No. 2 on an accelerated basis.

Amendment No. 3 to the proposal clarifies several issues relating to a.m. settlement, position reporting for index warrants, and other surveillance related matters. In particular, it provides that issuers must report all hedge unwinding transactions related to the early exercise of domestic index warrants to the listing exchange by the business day following trade date (''T+1'').[50] Also, the Amendment requires issuers to notify the listing exchange of any early exercises of index warrants by 3:30 p.m. (Chicago time) on settlement date for the warrants. The Commission believes these changes to the CBOE's surveillance procedures strengthen the Exchange's monitoring of index warrants. Also, the Amendment clarifies that a.m. settlement will be used during the 48 hour period prior to expiration of index warrants. The Commission notes that this change simply codifies a provision the CBOE previously agreed to in Amendment No. 2.[51] Finally, the Amendment raises the reporting level requirement for index warrants from 20,000 warrants to 100,000 warrants on the same side of the market. The Commission notes that this change

[46] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the Exchange and approved by the SEC. *See* Amendment No. 4. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[47] The Commission notes that there are no position or exercise limits applicable to currency or currency index warrants, although reporting requirements do apply. Nevertheless, the Commission may review the need to establish foreign currency position limits if the size of the currency or currency index warrant market increases significantly.

[48] With respect to the Comment Letter's suggestion that a hedge exemption rule be established in order to allow participants to readily acquire exemptions from the Exchange as needed, the Commission does not believe that such an approach is appropriate at this time. The hedge exemption for index options was adopted after several years experience with index options trading. Until the SROs gain some experience with domestic index warrant trading, it is difficult to determine the need for a hedge exemption (*i.e.*, that speculative limits are insufficient to meet hedging needs).

[49] Amendment No. 3 proposes to raise the reporting requirement for stock index warrants from 20,000 to 100,000 warrants.

[50] The Commission notes that Amendment No. 4 removes this transaction reporting requirement which will be incorporated into the Exchange's surveillance procedures.

[51] Amendment No. 5 subsequently changes the language of this provision to require a.m. settlement be used during the two business days prior to valuation date.

provides uniform treatment to index, currency and currency index warrants and should aid the Exchange's surveillance procedures. Accordingly, the Commission believes it is appropriate to approve Amendment No. 3 on an accelerated basis.

Amendment No. 4 deletes a transaction reporting requirement which will be revised and incorporated into the Exchange's surveillance procedures and also makes other minor changes. As such, the Commission does not believe the Amendment raises any new or unique regulatory issues. Second, the Amendment clarifies that the applicable margin level for currency index warrants will be a percentage as specified by the exchange and approved by the Commission. The Commission notes that this revision is consistent with the treatment afforded currency index options, where margin levels are established on a case by case basis. Accordingly, the Commission believes it is appropriate to approve Amendment No. 4 on an accelerated basis.

Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised prior to expiration. Specifically, the Amendment clarifies that a.m. settlement will be required on valuation date as well as during the last two business days prior to an index warrant's valuation date. As discussed above, the Commission believes that the use of a.m. settlement during this period will help to ameliorate any potential price effects associated with expirations of derivative index products. Accordingly, the Commission believes it is appropriate to approve Amendment No. 5 on an accelerated basis.

Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments No. 1, 2, 3, 4 and 5 to the CBOE's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, 2, 3, 4 and 5. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[52] that the proposed rule change (SR–CBOE–94–34) is approved, as amended, with the portion of the rule change relating to spread margin treatment being approved on a one year pilot program basis, ending August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[53]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22108 Filed 9–6–95; 8:45 am]

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[Release No. 34–36171; File No. SR–NASD–55–35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Date of Implementation of the NASD's Primary Market Maker Standards and the Duration of the Pilot Program for the NASD's Short Sale Rule

August 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 24, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission has also granted accelerated approval of the proposal.

[52] 15 U.S.C. 78s(b)(2) (1988).

[53] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act, the NASD is proposing to delay, from September 6, 1995 to December 1, 1995, the implementation date of the Primary Market Maker standards to be used to determine the eligibility of market makers to an exemption from the NASD's short-sale rule. The NASD also proposes to extend the termination date for the pilot period to June 3, 1996 instead of March 5, 1996. The text of the proposed rule change is as follows (additions are underlined; deletions are bracketed).

RULES OF FAIR PRACTICE

ARTICLE III

Short Sale Rule

Sec. 48

* * * * *

(1)(3) *Until December 1, 1995, t*[T]he term ''qualified market maker [,]'' [for a period of one year after the effective date of this section,] shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days.

* * * * *

For purposes of this subsection, a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through the Nasdaq system on a continuous basis; provided however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Part VI, Schedule D to the By-Laws, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. *Beginning December 1, 1995,* [One year after effectiveness of this section,] the term ''qualified market maker'' shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Article III, Section 49 of the Rules of Fair Practice.

* * * * *

(m) This section shall be in effect until *June 3, 1996* [March 6, 1996].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A., B., and C. below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On June 29, 1994, the SEC approved the NASD's short-sale rule applicable to short sales in Nasdaq National Market securities on an eighteen-month pilot basis through March 5, 1996.[2] The NASD's short-sale rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by the Nasdaq system whenever that bid is lower than the previous inside bid.[3] The rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time). As approved by the Commission, during the first year that the rule is in effect (*i.e.,* September 6, 1994 through September 5, 1995), Nasdaq market makers who maintain a quotation in a particular Nasdaq National Market security for 20 consecutive business days without interruption are exempt from the rule for short sales in that security, provided that the short sales are made in connection with bona fide market making activity (the ''20-day'' test). For the next six months of the 18-month pilot period (*i.e.,* September 6, 1995 through March 5, 1996), the ''20-day'' test for market maker exemption from the rule was scheduled to be replaced with a four-part quantitative test known as the Primary Market Maker (''PMM'') Standards.

Under the PMM standards, to be eligible for an exemption from the short-sale rule, a market maker must satisfy at least two of the following four criteria: (1) The market maker must be at the best bid or best offer as shown on the Nasdaq system no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its ''proportionate'' volume in stock.[4] If a market maker is a PMM for a particular stock, there will be a ''P'' indicator next to its quote in that stock. In addition, market makers will be able to review their status as PMMs through their Nasdaq Workstation. The review period for satisfaction of the PMM performance standards is one calendar month. If a PMM has not satisfied the threshold standards after a particular review period, the PMM designation will be removed commencing on the next business day following notice of failure to comply with the standards. Market makers may requalify for designation as a PMM by satisfying the threshold standards for the next review period.

Because of unforeseen delays in the programming of the PMM standards, however, the NASD is proposing that the effective date of the PMM standards be delayed until December 1, 1995. With the proposed delay, a market maker's trading activity during the month of November will be evaluated according to the PMM standards to determine if it can retain its exemption for December 1995. Until November 30th, the 20-day test will continue to be used to evaluate market makers' eligibility for an exemption from the rule. Thus, after December 1, 1995, a ''P'' indicator will be delayed next to every PMM that is exempt from the rule according to the new PMM standards.

Because implementation of the PMM standards will be delayed under the proposal, the NASD is also proposing to extend the pilot period for the rule so that there is sufficient time to evaluate the effectiveness and impact of the PMM standards and the effectiveness of the short sale rule with the PMM standards in place. Specifically, the NASD proposes to extend the termination date for the pilot program until June 3, 1996.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) and 11A(c)(1)(F) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Section 11A(c)(1)(F) assures equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities. Specifically, the NASD believes that continuing the operation of the present ''20-day'' test until the PMM standards are in place will ensure that the liquidity provided to the market by virtue of the market maker exemption will not be diminished. In addition, the NASD believes that continuation of the ''20-day'' test until the PMM standards are in place would avoid the confusion in the marketplace that would result if the market maker exemption were to lapse for two months and then be reinstated. Finally, the NASD believes that extending the pilot period for the short-sale rule will enhance the quality of studies analyzing the effectiveness of the rule and help to ensure that future regulatory action taken with respect to the rule is based on a greater knowledge and understanding of the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approved such propose rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD has requested, however, that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**.

[2] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (''Original Approval Order'').

[3] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

[4] Specifically, the proportionate volume test requires a market maker to account for volume of at least one-and-a-half times its proportionate share of overall volume in the security for the review period. For example, if a security has 10 market makers, each has a proportionate share of 10 percent. Therefore, the proportionate share volume is one-and-a-half times 10, or 15 percent of overall volume.

As discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act. Further, the Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of notice of filing in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in that it will permit the NASD to provide interested persons adequate notice that implementation of the PMM standards will be delayed until December 1, 1995 and that the expiration of the short sale rule, including the PMM standards, will be extended until June 3, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

As discussed in the Original Approval Order, the Commission believed and continues to believe that the imposition for a limited time of a short sale rule and accompanying PMM standards applicable to Nasdaq National Market securities is consistent with the requirements of Sections 15A(b)(6), 15A(b)(9) and 15A(b)(11) of the Act.[5] As discussed below, the Commission believes that delayed implementation of the PMM standards until December 1, 1995 and limited extension of the short sale rule until June 3, 1996 (rather than March 6, 1996) is consistent with the Act and the rules and regulations promulgated thereunder.[6]

Maintaining the current operation of the short sale rule until the NASD has completed and tested the systems necessary to provide market participants adequate notice of a market maker's PPM status will avoid confusion in the marketplace and assure consistency in the application of NASD rules. Moreover, extension of the short sale rule until June 3, 1996 will maintain the effectiveness of the PMM standards for six months, as envisioned by the Commission's Original Approval Order. As noted in the Original Approval Order, this will provide the Commission and the NASD the opportunity to study the effects of the rule and its exemptions and to determine whether these are practicable and necessary on an ongoing basis, or whether other alternatives would be more appropriate.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

VI. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the rule change SR–NASD–95–35 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[5] 15 U.S.C. 78*o*–3(b) (6), (9) and (11). Section 15A(b)(6) requires among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. 15 U.S.C. § 78*o*–3(b)(6). Sections 15A(b) (9) and (11) require that the NASD's rule be designed not to impose any burden on competition not necessary or appropriate in furtherance of the Act, *id.* § 78*o*–3(b)(9), and to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing and publishing quotations. *Id.* § 78*o*–3(b)(11). In addition, the Commission believes that the rule change will further the goals of Section 11A in that it will promote efficient and effective market operations and economically efficient execution of investor orders in the best market and assure fair competition between the exchange markets and the OTC market and among brokers and dealers. *Id.* § 78k–1(a)(1)(C),

[6] Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

[7] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34–36165; File No. SR-NYSE–94–41]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

I. Introduction

On November 9, 1994, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) (''Section 19(b)'') of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish uniform rules for the listing and trading of stock index (''index'' or ''stock index''), currency (''currency'') and currency index (''currency index'') warrants (collectively ''warrants''). Notice of the proposed rule change appeared in the **Federal Register** on December 20, 1994.[3] One comment letter was received in response to the proposal.[4]

The Exchange subsequently filed Amendment No. 1 (''Amendment No. 1'') to the proposal on August 25, 1995. Amendment No. 1 proposes to amend the filing in order to respond to the Comment Letter, the Commission's comments and to conform certain of the Exchange's proposed rules and policies to those filed by other securities markets. This order approves the proposal, as amended.

II. Description of the Proposal

The NYSE proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.[5] Paragraphs 703.15 (Foreign Currency Warrants and Currency Index Warrants) and 703.17 (Stock Index Warrants Listing Standards) of the *Listed Company Manual* would be amended to provide uniform listing criteria for index,

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35095 (Dec. 12, 1994), 59 FR 65552.

[4] *See* Letter from Paul M. Gottlieb, Seward & Kissell, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 (''Comment Letter'' or ''Seward & Kissell Letter'').

[5] The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may only be exercised during a specified period before expiration).

currency and currency index warrants. First, warrant issuers would be expected to exceed minimum issuer listing standards. In particular, the Exchange proposes that issuers be required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded through NASDAQ exceeds 25% of the issuer's net worth.[6]

Second, the proposal requires that each unexercised in-the-money warrant be automatically exercised on either the delisting date (if the issue is not listed upon another organized securities market) or upon expiration. Third, the proposal provides that for warrant offerings where U.S. stocks constitute 25% or more of the index value (''domestic index''), issuers shall use opening prices (''a.m. settlement'') for U.S. stocks to determine index warrant settlement values at expiration of the warrants, as well as the two business days preceding expiration.[7] Fourth, a new paragraph has been added to Para. 703.17 of the *Listed Company Manual* to prohibit ''non-U.S. component securities'' from constituting more than 20 percent of the weighted value of an index stock group that underlies a stock index warrant. For purposes of this provision, the term ''non-U.S. component security'' means, the stock, or an American Depositary Receipt on the stock, of a company that is organized outside of the United States, where more than 50 percent of the dollar value of the global trading volume of the security occurs outside of the United States and that are not subject to a comprehensive surveillance agreement with the primary foreign market.[8] Finally, the Exchange proposes to add Rule 414(n), which is designed to assist in the surveillance of index warrant trading. Specifically, the Exchange will require issuers of stock index warrants to notify the Exchange of any early exercises. For domestic index warrants, this notice must occur by 4:30 p.m. (New York time) on the day that the settlement value for the warrants is determined.[9]

Rule 431 (''Rule 431''), the NYSE margin rule, is being amended to apply the current customer margin requirements for broad based stock index and currency options to stock index, currency and currency index warrants. Thus, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, but to a minimum of ten percent of the index value. Short sales of currency warrants will follow the margin requirements currently applicable to listed currency options. Specifically, the Exchange proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall each be subject to a margin level of 100% of the current market value of each such warrant plus a four percent ''add-on.'' [10] The margin required on currency index warrants would be an amount as determined by the Exchange and approved by the Commission.[11] The Exchange also proposes that its stock index, currency and currency index warrant margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the Exchange proposes that index, currency and currency index warrants may be offset with either warrants or Options Clearing Corporation (''OCC'') issued options on the same index, currency or currency index, respectively. Furthermore, the Exchange has proposed that subsections (f)(2)(F)(i), (f)(2)(G)(ii) and (f)(2)(G)(iii) of Rule 431, to the extent that such rules concern spread and straddle positions in warrants, be subject to a one year pilot basis.[12]

Paragraph (f)(2)(H)(iv) of Rule 431 would be amended to permit the carrying of ''short'' option positions against the use of letters of guarantee or (in the case of a call) ''escrow receipts,'' without the need for margin. The amendment proposes to expand that provision to include stock index warrants as well as options. The use of ''escrow receipts'' to offset a short call option or warrant position would be new to the Exchange's margin rules, which currently only allow the use of letters of guarantee. However, the margin rules of other U.S. options exchanges provide that no margin is required on a short call option where a customer has delivered to the firm carrying the customer's account a satisfactory escrow receipt. Amendment No. 1 would add the escrow receipt concept to the Exchange's margin rules in respect of margin on options, as well as on stock index warrants, and would do so in a way that generally parallels the permissible use of letters of guarantee under the Exchange's margin rules.

Proposed Rule 414(f) states that no member or member organization shall accept an order from a customer for the purchase or sale of warrants unless the customer's account has been approved for options trading pursuant to Exchange Rule 721. Furthermore, proposed Rules 414(g)–(k) require that the option rules pertaining to supervision of accounts, suitability, discretionary account trading, customer complaints and communications to customers be applied to transactions in warrants. Finally, prior to trading index, currency or currency index warrants, the Exchange will distribute circulars to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in warrants.

Proposed Rule 414(c) provides that position limits for stock index warrants on the same index with original issue prices of ten dollars or less will be fifteen million warrants covering all such issues.[13] The rule provides that warrants with an original issue price of greater than ten dollars will be weighted more heavily than warrants with an original issue price of ten dollars or less in calculating position limits.[14] The rule also gives the Exchange the authority to require the liquidation of a position in stock index warrants that is in excess of

[6] *See* Amendment No. 1. The Exchange amended this provision in response to the Seward & Kissell Letter.

[7] *See* Amendment No. 1. The Exchange amended its proposal in response to the Seward & Kissell Letter and will require the use of opening prices in calculating index warrant settlement values during the 48 hours prior to expiration. Before then, an issuer may use either opening or closing prices.

[8] *See infra* note 37 and accompanying text.

[9] *See* Amendment No. 3.

[10] *See* Amendment No. 2. Consistent with the treatment of options on foreign currencies, warrants on the Canadian Dollar will be subject to a one percent ''add-on.'' The margin required on any other foreign currency would be subject to approval by the Commission. *See infra* note 26.

[11] *See infra* note 26.

[12] Three months prior to the expiration of the pilot program, the Exchange will submit a report to SEC staff analyzing the price relationship between listed warrants and options on similar stock indexes. *See* Amendment No. 1. The Exchange has also requested no-action relief from the Commission in order to permit certain short positions in stock index call and put warrants to be treated as covered for margin purposes.

[13] *See infra* note 39.

[14] For example, if an investor held 100,000 warrants based upon the Standard & Poor's 500 Index offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000.

the position limits set forth in the rule, and Commentary to the rule establishes procedures for allowing limited exceptions to the position limits.

Proposed Rule 414(d) provides for exercise limits on stock index warrants analogous to those found in stock index options and states that such limits are distinct from any exercise limits that may be imposed by the issuers of stock index warrants. Accordingly, no member may exercise a long position in warrants over a five consecutive day period in excess of the permissible position limit.

In order to facilitate its review of compliance with position and exercise limits, the Exchange has proposed Rule 414(c)(v) which establishes reporting requirements for large warrant positions. Under the terms of the rule, members will be required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position of 100,000 warrants overlying the same index, currency or currency index. For purposes of this rule, the Exchange proposes that long positions in puts be combined with short positions in call warrants, and that short positions in puts be combined with long positions in call warrants.[15] Finally, proposed Rule 414(e) requires that the trading halt provisions of Rule 717 shall be applied to the trading of stock index warrants.

Upon Commission approval of the foregoing rule amendments, the Exchange proposes that it will only file rule changes for specific stock index warrant issuances where there is no corresponding option or warrant on the same underlying stock index already listed on a national securities exchange or included for quotation on NASDAQ. Accordingly, when a listed option overlies a particular broad based index, the Exchange proposes it be allowed to list warrants on that index without further Commission review and approval pursuant to Section 19(b) of the Act, as long as the listing complies with the warrant listing standards as approved in this Order.[16]

III. Comments Received

The Commission received one letter in response to its request for comments on the NYSE proposal.[17] The Comment Letter was generally supportive of the NYSE's proposal, however, it recommended several changes in the proposed regulatory structure applicable to stock index, currency and currency index warrants. The Comment Letter was submitted on behalf of the Firms, all of whom are represented to be major participants in the issuance, underwriting and trading of warrants. Because the proposed regulatory regime applicable to warrants will, to some extent, be based upon the rules governing standardized options, the Comment Letter states that the Firms' comments are driven, in part, by the fact that fundamental differences exist between warrants and standardized options which necessitate disparate regulatory treatment in certain situations.[18]

First, the Comment Letter suggested amending the Issuer Listing Standards to eliminate the 25% test or, in the alternative, to adopt hedging and/or netting standards designed to more accurately reflect issuer-specific risk.[19] Because warrants are sold by means of a registration statement, the Firms believe that adequate disclosure of the amount of an issuer's outstanding securities could be included in the prospectus. Furthermore, the Comment Letter points out that issuers of warrants are traditionally subject to outside evaluation by certain credit rating agencies, which should assist investors in determining undue issuer credit risk. Finally, the Firms do not believe the 25% test bears any resemblance to an issuer's risk exposure since exposure fluctuates with market changes at any given time and also because the proposal provides no recognition for offsetting hedges or for warrants subject to netting.

In response to the Seward & Kissel Letter's comments respecting issuer listings standards, the NYSE amended the filing to add an alternative issuer qualification criteria.[20] Under the new criteria, an issuer will be required to either: (a) have a minimum tangible net worth of $250 million; or (b) meet the existing criteria (*i.e.*, tangible net worth of $150 million and meet the 25% test).

The Comment Letter also recommended allowing the use of p.m. settlement for all American-style warrants exercised anytime except 48 hours prior to expiration, at which time a.m. settlement would be required. According to the Comment Letter, unlike with listed options (where OCC is the issuer and runs a balanced book), a warrant issuer must hedge its exposure to maintain offsetting positions. Upon early exercise of the warrants, the issuer that has hedged its exposure will have to take action to ''unwind'' the portion of its hedge relating to the exercised warrants. The Firms believe that requiring a.m. settlement on the first day after an investor exercises the warrant will place additional market risk upon them due to the difficulty in managing the hedge. This increased hedging cost, the Firm's argue, could result in a higher issuance price for the warrant or could require that the warrant settlement value date be postponed an additional day, with warrant holders bearing additional market risk during this period.

In response to the Comment Letter, the NYSE amended its filing to include a provision permitting p.m. settlement for stock index warrants except for a short period before expiration.[21] Under the terms of the amendment, stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the U.S. shall, by their terms, provide that, on valuation date, as well as for the two business days prior to valuation date, the value of the stocks traded primarily in the U.S. which underlie such warrants shall be determined be reference to the opening prices of such underlying U.S. securities. For example, if the valuation date for an issuance of index warrants occurs on a Friday, a.m. settlement must be utilized for warrants that are valued on the preceding Wednesday or Thursday, as well as on the valuation date.

Third, the Comment Letter recommended creating a special category of ''warrant eligible'' customers (separate and distinct from options eligibility criteria), who are authorized to trade warrants even if not approved

[15] *See* Amendment No. 1.

[16] *See infra* note 26.

[17] *See supra* note 4. The Seward & Kissel Letter was submitted on behalf of PaineWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc. (correctively the ''Firms'').

[18] The Comment Letter lists several differences which it perceives exist between warrants and standardized options. Chief among these are: (1) warrants are separately registered, unsecured obligations of their issuer while options are issued and guaranteed by the Options Clearing Corp. (''OCC''); (2) during the prospectus delivery period, warrant purchasers receive a product-specific prospectus while options customers receive an options disclosure document (''ODD'') at the time the account is opened; (3) each warrant creates a fixed number of outstanding warrants while there is theoretically no limit to the number of options that may be issued by OCC; and (4) warrants are traded on an exchange in a manner similar to stocks which, therefore, translates into superior price transparency than for listed options.

[19] As originally proposed, an issuer would have been required to have a tangible net worth of at least $150 million and the aggregate original issue price of all of a particular issuer's warrant offerings (combined with such offerings by its affiliates) that are listed on a national securities exchange or that are national market securities traded through NASDAQ were not to exceed 25% of the issuer's net worth (''25% test).

[20] *See* Amendment No. 1.

[21] *See* Amendment No. 1.

to trade options. The Firms believe it is inappropriate to apply an options regulatory regime to warrants and that doing so may prevent institutional customers who are not permitted to purchase options products, yet who nevertheless meet all of the options eligibility criteria, from purchasing warrants. In this regard, the Firms propose to create a ''warrant eligible'' category with standards mimicking those currently required for options approved accounts. As such, ''warrant-approved'' accounts could purchase warrants, however, they could not purchase options or other products requiring options account approval. The NYSE did not amend its filing in response to this comment.

Fourth, the Comment Letter urges the adoption of a rule permitting firms to approve for warrant trading those accounts managed by an investment adviser (''IA'') based upon the IA's representation concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the brokerage firms. The NYSE has amended its proposal to allow member firms to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed account is not provided to the member firm, where the managed account is for an institutional customer or the investment advisor represents the collective investment of a number of persons. The NYSE states that this will conform the handling of warrant accounts to the current practice with respect to listed options accounts.[22]

Finally, the Comment Letter Addressed the proposed position limits applicable to warrants. Specifically, the Comment Letter noted that position limits for warrants would be set at levels that are approximately 75% of that allowed for similar broad-based indexes. The Comment Letter recommended establishing position limits for warrants that were equivalent to those established for listed options, allowing a hedge exemptions similar to listed option procedures and providing a mechanism for specific waivers or exemptions of warrant position limits for hedgers, market-makers and broker-dealers comparable to the procedures in place for listed options. The NYSE did not amend its filing in response to this comment.

[22] *See* Amendment No. 1.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[23] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing standards for broad-based stock index, currency and currency index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the NYSE's proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The NYSE's proposed generic listing standards for broad-based stock index warrants, currency and currency indexes set forth a regulatory framework for the listing of such products.[24] Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have a negative market impact. In addition, these standards should address the special risks to customers arising from the derivative products.[25] For the reasons discussed below, the Commission believes the NYSE's proposal will provide it with significant flexibility to list index, currency and currency index warrants, without compromising the effectiveness of the Exchange's listing standards or regulatory program for such products.[26]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on a stock index, currency or currency index permits investors to participate in the price movements of the underlying assets, and allows investors holding positions in some or all of such assets to hedge the risks associated with their portfolios. The Commission further believes that trading warrants on a stock index, currency or currency index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

[23] 15 U.S.C. 78f(b)(5) (1982).

[24] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[25] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

[26] Issuances of warrants overlying a single currency may currently be listed for trading without a rule filing provided that the underlying currency is one of the original seven foreign currencies approved for options trading: the Australian Dollar, British Pound, Canadian Dollar, French Franc, German Mark, Japanese Yen, Swiss Franc and the European Currency Unit. Issuances of currency warrants overlying any other foreign currency would require a rule filing pursuant to Section 19(b) of the Act. The Commission notes that currency index warrants may only be established without a further rule filing upon an index that has been previously approved by the Commission pursuant to a Section 19(b) filing. To date, the only currency index approved pursuant to Section 19(b) is an equal-weighted index comprised of the British Pound, Japanese Yen and German Deutsche Mark. *See* Securities Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399 (Dec. 30, 1992). Accordingly, any other currency index (as well as a broad-based stock index) not previously approved by the Commission would require approval pursuant to Section 19(b).

Warrants, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the Exchange's issuer listing standards that require an issuer to have either; (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency and currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants. Moreover, the alternative test addresses the Comment Letter's concerns on the 25% standard.

The NYSE's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) (''domestic index warrants'') are required to utilize a.m. settlement for expiring warrants as well as during the last two business days prior to valuation date.[27] The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, in accordance with the Comment Letter's suggestions, the use of p.m. settlement except during the last two business days prior to a domestic index warrant's valuation date, as well as the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designing their products.[28] In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at settlement. Nevertheless, the Commission expects the Exchange to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the NYSE has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with the trading in these instruments, in accordance with NYSE Rule 721, and that adequate disclosure of the risks of these products must be made to investors.[29] In addition, the NYSE will apply the options rules for suitability, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the NYSE had addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The NYSE had adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index, currency and currency index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period. The Commission believes that this will ensure that certain information about the particular issuance and issuer is publicly available.

As noted above, the Comment Letter indicates that applying the options disclosure framework to warrants is inappropriate. However, the Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the Exchange circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

At this time, the Commission does not agree with the proposal contained in the Comment Letter to create a special ''warrant eligible'' classification of purchasers. As noted above, index, currency and currency index warrants are very similar to standardized options. They are so similar that a customer precluded from trading options should not avoid the restriction indirectly by being designated by Exchange rules as eligible for stock index, currency or currency index warrants. Nevertheless, as the range of exchange-traded derivative products increases, the SROs might consider in the future as to whether a new derivatives eligibility classification is appropriate.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard the Commission notes that the Exchange has developed adequate surveillance procedures for the trading of index and currency warrants. First, new issues of currency warrants will be subject to the NYSE's existing surveillance procedures applicable to foreign currency warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses

[27] Currency and currency index warrants are not limited to a.m. or p.m. settlement.

[28] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

[29] Pursuant to NYSE Rule 726, all options approved accounts must receive an ODD, which discusses the characteristic and risks of standardized options.

involving the warrant market and the underlying foreign currencies.[30]

Second, the Exchange has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[31] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the Exchange on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the NYSE in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Third, the Exchange has developed adequate surveillance procedures to apply to foreign stock index warrants (*i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[32] The Commission believes that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement[33] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivative product and its underlying stocks.[34] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur.[35] In this regard, the NYSE will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The Exchange has in place an effective surveillance agreement[36] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard available for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[37] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the NYSE has no surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants, currency warrants and currency index warrants will not adversely affect the U.S. securities markets or foreign currency markets. First, with respect to currency and currency index warrants, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and option on those futures. An active over-the-counter market also exists in options, forwards and swaps for foreign currencies. This minimizes the possibility that Exchange listed warrants would be used to manipulate the spot currency markets. In addition, the surveillance procedures for these products would allow the Exchange to detect and deter potential manipulation involving currency warrants and currency index warrants.

Second, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously determined to be broad-based in the context of index options or warrant trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad based stock index options or warrants will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes that NYSE's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Third, the Exchange has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the Exchange to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve on a permanent basis the proposed spread margin rules.[38]

[30] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987), and Securities Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988). The Commission notes that these surveillance procedures only apply to the issuance of warrants overlying one of the approved foreign currencies. *See supra* note 26. The issuance of warrants upon any other foreign currency would necessitate a Section 19(b) rule filing which, among other things, details applicable surveillance procedures.

[31] In addition, the Commission notes that issuers will be required to report to the Exchange all trades to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the Exchange to monitor the unwinding activity to determine if it was effected in a manner that violates Exchange or Commission rules.

[32] Each prior issuance of a foreign stock market based index warrant is subject to specific surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[33] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[34] The ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

[35] In the context of domestic index warrants, the Commission notes that the U.S. exchanges are members of the Intermarket Surveillance Group (''ISG''), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[36] *See supra* note 33.

[37] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

[38] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the Exchange and approved by the

Fourth, the NYSE has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.[39] Contrary to the views expressed in the Comment Letter, the Commission believes that in the absence of trading experience with domestic index warrants, it would be imprudent to establish position limits for positions greater than those currently applicable to domestic stock index options on the same index.[40]

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards covering index, currency and currency index warrants will provide an appropriate regulatory framework for these products. These standards will also benefit the Exchange by providing them with greater flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index or a non-approved currency or currency index. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** for the following reasons. As discussed below, the changes are either (1) minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures. Accordingly, the amendments do not raise new significant regulatory issues or are responsive to prior comments. In order to enable the Exchange to list new index, currency or currency index warrants as soon as possible, the Commission believes it is necessary and appropriate to approve the amendment on an accelerated basis.

Amendment No. 1 proposes to make the following changes to the Index Warrant Filing:

Changes to Trading Rules

- A definition of ''cross currency'' would be added to Rule 414(a)(ii).
- The position limit rule (Rule 414(c)(i)) would be amended to provide that, in determining compliance with position limits, ''aggregate stock index warrant position'' refers to warrants ''on the same side of the market''.
- A new paragraph 414(c)(v) (''Reports of Index Warrant Positions'') would be added to require members and member organizations to report aggregate positions in excess of 100,000 warrants.
- The Index Warrant Filing prescribes the use of opening prices in determining settlement values for all settlement dates. This Amendment No. 1 would amend Paragraph 414(l) (''Settlement Values'') to require the use of opening prices in respect of the calculation of settlement values on the day of expiration or on the two business days prior to expiration. Before then, an issuer may use either opening or closing prices in calculating settlement values.
- A new paragraph 414(n) would be added to require the reporting of changes in the number of outstanding warrants due to early warrant exercises.

Changes to Margin Rules

- A new paragraph would be added to Paragraph (f)(2)(C) of Rule 431 (''Margin Requirements'') in order to define ''call'' and ''put'' in the currency, currency index and stock index warrant context.
- A new element would be added to the definition of ''index group value'' (*see* Paragraph (f)(2)(C) of Rule 431): In calculating the index group value, one must multiply by the index value (as in the Index Warrant Filing), and divide by any applicable divisor for which the warrant's prospectus may provide (a new addition).
- Paragraph (f)(2)(D)(i) of Rule 431 contains a chart of initial, maintenance and minimum margin requirements. The currency warrant section of that chart would be amended so as to list the margin requirements for specific currencies. The currency index warrant section would be amended to provide that the Exchange will determine currency index warrant margin requirements on a case-by-case basis.
- The Index Warrant Filing proposes to provide margin advantages to certain option and warrant positions (*i.e.*, certain spread and straddle positions) by adding second and third paragraphs to Paragraph (f)(2)(F)(1). This Amendment No. 1 would revise the permissible offset positions and restate those paragraphs to make them easier to read.
- Two paragraphs would be deleted from Paragraph (f)(2)(H). The Index Warrant Filing proposes those paragraphs for the purpose of addressing margin on ''short'' stock index warrant positions where the holder of the position has hedged by replicating the underlying index with appropriate positions in the component securities. The paragraphs would be replaced by the ''letter of guarantee'' and ''escrow receipt'' provisions discussed in the next three bullets.
- Paragraph (f)(2)(H)(iv) (which the Index Warrant Filing proposes to renumber as (f)(2)(H)(v)) of Rule 431) would be amended (although it was not amended in the Index Warrant Filing). That paragraph permits the carrying of ''short'' option positions against the use of letters of guarantee or (in the case of a call) escrow receipts, without the need for margin. The amendment proposes to expand that provision to include stock index warrants as well as options.
- The use of ''escrow receipts'' to offset a position carried short would be new to the Exchange's margin rules, which currently only allow the use of letters of guarantee. However, the margin rules of other United States options exchanges provide that no margin is required on a call option where a customer has delivered to the firm carrying the customer's account a satisfactory escrow receipt. Amendment No. 1 would add the escrow receipt concept to the Exchange's margin rules in respect of margin on options, as well as on stock index warrants, and would do so in a way that generally parallels the permissible use of letters of

SEC. *See* Amendment No. 1. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[39] The Commission notes that there are no position or exercise limits applicable to currency or currency index warrants, although reporting requirements do apply. Nevertheless, the Commission may review the need to establish foreign currency position limits if the size of the currency or currency index warrant market increases significantly.

[40] With respect to the Comment Letter's suggestion that a hedge exemption rule be established in order to allow participants to readily acquire exemptions from the Exchange as needed, the Commission does not believe that such an approach is appropriate at this time. The hedge exemption for index options was adopted after several years experience with index options trading. Until the SROs gain some experience with domestic index warrant trading, it is difficult to determine the need for a hedge exemption (*i.e.*, that speculative limits are insufficient to meet hedging needs).

guarantee under the Exchange's margin rules.

• The definition of two terms that are found in existing paragraph (f)(2)(H)(iv) of Rule 431 would be amended. The changed definitions would apply in the ''letter of guarantee'' context, as well as in the ''escrow receipt'' context.

• The definition of ''qualified security'' would change to ''a security listed on a national securities exchange'', rather than ''a security that meets the listing criteria of the Exchange or of the American Stock Exchange''.

• The definition of ''cash equivalents'' would change to ''securities issued or guaranteed by the United States and having a maturity of two years or less'', rather than ''those instruments referred to in section 220.8(a)(3)(ii) of Regulation T''.

The changes to both definitions follow similar changes that the American Stock Exchange has heretofore effected.

• Paragraph (f)(2)(K) of Rule 431 would be amended to specify that the Exchange may specify higher margin for ''warrants'' (stated generically) if the Exchange deems circumstances to warrant higher margin.

• New Supplementary Material .20 would be added to Rule 431 to specify that the Exchange will subject the spread and straddle margin rules that the Index Warrant Filing proposes to add to paragraphs (f)(2)(F)(i), (f)(2)(G)(ii) and (f)(2)(G)(iii) of Rule 431 to a one-year pilot program. The Exchange would submit to the Commission three months prior to the expiration of the pilot programs a report analyzing the price relationship between listed warrants and options on similar stock indexes.

Changes to Listing Standards

• The ''net worth''/''asset'' test applicable to issuers of currency, currency index or stock index warrants would be amended. (*See* paragraph (a) of Para. 703.15 of the *Listed Company Manual* in respect of currency and currency index warrants and paragraph (a) of Para. 703.17 of the *Listed Company Manual* in respect of stock index warrants.) Under the new test, an issuer may satisfy the test if it has minimum tangible net worth in excess of $250 million. Alternatively, as in the Index Warrant Filing, the issuer may have minimum tangible net worth in excess of $150 million if its total currency, currency index and stock index warrants do not exceed 25 percent of its net worth.

• Para. 703.15 and Para. 703.17 of the *Listed Company Manual* would limit the term of currency, currency index and stock index warrants to between one and five years.

• A new paragraph would be added to Para. 703.17 of the *Listed Company Manual* to prohibit ''non-United States component securities'' that are not subject to comprehensive surveillance agreements from constituting more than 20 percent of the weighted value of an index stock group that underlies a stock index warrant.

Finally, the Index Warrant Filing proposes to introduce Rule 414(h) (''Suitability''), which would limit trading by customers in currency, currency index or stock index warrants to options-approved accounts. In the case of an institutional account or an investment club or other collective account, the Exchange would allow a member organization to accept the representation of a registered investment adviser as to the eligibility of the institution or collective investment group, even if the managed account is lacking the underlying documentation.

As mentioned above, because the changes are either (1) minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures, the Commission believes it is appropriate to approve Amendment No. 1 on an accelerated basis.

Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the NYSE's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–NYSE–94–41) is approved, as amended, with the portion of the rule change relating to spread margin treatment being approved on a one year pilot program basis, ending August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–36166; File No. SR–PSE–94–28]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1, 2, 3, 4 and 5 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

I. Introduction

On September 22, 1994, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) (''Section 19(b)'') of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish uniform rules for the listing and trading of stock index (''index'' or ''stock index''), currency (''currency'') and currency index (''currency index'') warrants (collectively ''warrants''). Notice of the proposed rule change appeared in the **Federal Register** on December 20, 1994.[3] One comment letter was received in response to the proposal.[4]

The Exchange subsequently filed five Amendments to the proposal.[5]

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[41] 15 U.S.C. 78s(b)(2) (1988).

[42] 17 CFR § 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35088 (Dec. 12, 1994), 59 FR 65554.

[4] *See* Letter from Paul M. Gottlieb, Seward & Kissel, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 (''Comment Letter'' or ''Seward & Kissel Letter'').

[5] *See* Letters from Michael Pierson, PSE, to Stephen M. Youhn, SEC, dated March 24, 1995

Amendment No. 1 brings several of PSE's proposed rules and policies into conformity with those previously filed by other markets. Amendment No. 2 addresses currency and currency index warrant margin levels. Amendment No. 3, in addition to responding to several technical changes requested by the staff, addresses issues relating to spread margin, reporting requirements and notification of early exercises. Amendment No. 4 removes certain surveillance procedures from the PSE's rules. Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised at or prior to expiration. This order approves the proposal, as amended.

II. Description of the Proposal

The PSE proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.[6] Rule 8.3, Listing of Currency and Index Warrants, would be amended to provide uniform listing criteria for index, currency and currency index warrants. First, issuers would be expected to exceed minimum issuer listing standards. In particular, the Exchange proposes that issuers be required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded through NASDAQ exceeds 25% of the issuer's net worth.[7]

Second, the proposal requires that unexercised in-the-money warrants be automatically exercised on either the delisting date (if the issue is not listed upon another organized securities market) or upon expiration. Third, the proposal provides that for warrant offerings where U.S. stocks constitute 25% or more of the index value (''domestic index''), issuers shall use opening prices (''a.m. settlement'') for U.S. stocks to determine index warrant settlement values during the 48 hour period prior to expiration of the warrants.[8] Fourth, Rule 8.3(a)(7) has been amended to provide that foreign country securities or American Depositary Receipts (''ADRs'') thereon that are not subject to a comprehensive surveillance sharing agreement with the Exchange and that have less than 50% of their global trading volume (in dollar value) within the U.S., shall not represent more than 20% of the weight of the index.[9] Finally, the Exchange proposes to add Rule 8.3(a)(8), which is designed to assist in the surveillance of index warrant trading. Specifically, the Exchange will require issuers of stock index warrants to notify the Exchange of any early exercises by 1:30 p.m. (Pacific time) on the day that the settlement for the warrants is determined.[10]

Rule 2.16(d)(2) (''Rule 2.16(d)(2)''), the PSE margin rule, is being amended to apply the current customer margin requirements for broad based stock index and currency options to stock index, currency and currency index warrants. Thus, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, up to a maximum of five percent of the index value. Short sales of currency warrants will follow the margin requirements currently applicable to listed currency options. Specifically, the Exchange proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall each be subject to margin level of 100% of the current market value of each such warrant plus a four percent ''add-on.'' [11] The margin required on currency index warrants would be an amount as determined by the Exchange and approved by the Commission.[12] The Exchange also proposes that its stock index, currency and currency index warrant margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the Exchange proposes that index, currency and currency index warrants may be offset with either warrants or Options Clearing Corporation (''OCC'') issued options on the same index, currency or currency index, respectively. Furthermore, the Exchange has proposed that subsections (F)(3), (F)(4), and (G)(4)–(7) to Rule 2,16(d)(2), to the extent that such rules concern spread and straddle positions in warrants, be subject to a one year pilot basis.[13] Finally, proposed Rule 2.16(d)(2)(H)(6) will also permit the use of escrow receipts to cover a short call position in a broad-based stock index warrant.[14]

Proposed Rule 8.4 states that no member or member organization shall accept an order from a customer for the purchase or sale of warrants unless the customer's account has been approved for options trading pursuant to Exchange Rule 9.18(b). Furthermore, proposed Rules 8.5–8.8 require that the option rules pertaining to suitability, discretionary account trading, supervision of accounts and customer complaints be applied to warrants.

Proposed Rule 8.9 requires approval by a Compliance Registered Options Principal of all advertisements, sales literature and educational material issued by a member organization pertaining to warrants. The rule further requires Exchange approval of all advertisements and educational materials pertaining to warrants. Finally, prior to trading index, currency or currency index warrants, the Exchange will distribute circulars to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in warrants.

Proposed Rule 8.10 provides that position limits for stock index warrants on the same index with original issues prices of ten dollars or less will be fifteen million warrants covering all such issues.[15] The rule provides that warrants with an original issue price of greater than ten dollars will be weighted

(''Amendment No. 1''), June 8, 1995 (''Amendment No. 2''), June 23, 1995 (''Amendment No. 3''), August 1, 1995 (''Amendment No. 4''), and August 22, 1995 (''Amendment No. 5'').

[6] The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may only be exercised during a specified period before expiration).

[7] *See* Amendments No. 1 and 3. The Exchange amended this provision in response to the Seward & Kissell Letter.

[8] *See* Amendment No. 3. The Exchange amended its proposal in response to the Seward & Kissell Letter and notes that a warrant based upon a domestic U.S. stock index may be settled using closing prices (''p.m. settlement'') for the underlying stocks at all times except for valuation day and the two business days immediately preceding valuation day.

[9] *See* Amendment No. 1.

[10] *See* Amendment No. 3.

[11] *See* Amendment No. 2. Consistent with the treatment of options on foreign currencies, warrants on the Canadian Dollar will be subject to a one percent ''add-on.'' The margin required on any other foreign currency would be subject to approval by the Commission. *See infra* note 28.

[12] *See infra* note 28.

[13] Three months prior to the expiration of the pilot program, the Exchange will submit a report to SEC staff analyzing the price relationship between listed warrants and options on similar stock indexes. *See* Amendment No. 1. The Exchange has also requested no-action relief from the Commission in order to permit certain short positions in stock index call and put warrants to be treated as covered for margin purposes.

[14] *See* Amendment No. 1. The Exchange notes that this treatment is consistent with the rules that allow for the use of escrow receipts to cover a short call position in broad-based stock index options.

[15] *See infra* note 41.

more heavily than warrants with an original issue price of ten dollars or less in calculating position limits.[16] The rule also gives the Exchange the authority to require the liquidation of a position in stock index warrants that is in excess of the position limits set forth in the rule, and Commentary to the rule establishes procedures for allowing limited exceptions to the position limits.

Proposed Rule 8.11 provides for exercise limits on stock index warrants analogous to those found in stock index options and states that such limits are distinct from any exercise limits that may be imposed by the issuers of stock index warrants. Accordingly, no member may exercise a long position in warrants over a five consecutive day period in excess of the permissible position limit.

In order to facilitate its review of compliance with position and exercise limits, the Exchange has proposed Rule 8.17 which establishes reporting requirements for large warrant positions. Under the terms of the rule, members will be required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position of 100,000 warrants overlying the same index, currency or currency index. For purposes of this rule, the Exchange proposes that long positions in puts be combined with short positions in call warrants, and that short positions in puts be combined with long positions in call warrants.[17] Finally, proposed Rule 8.12 requires that the trading halt provisions in Rule 7.11 shall be applied to the trading of stock index warrants.

Upon Commission approval of the foregoing rule amendments, the Exchange proposes that it will only file rule changes for specific stock index warrant issuances where there is no corresponding option or warrant on the same underlying stock index already listed on a national securities exchange or included for quotation on NASDAQ. Accordingly, when a listed option overlies a particular broad based index, the Exchange proposes it be allowed to list warrants on that index without further Commission review and approval pursuant to Section 19(b) of the Act, as long as the listing complies with the warrant listing standards as approved in this Order.[18]

[16] For example, if an investor held 100,000 warrants based upon the Standard & Poor's 500 Index offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000.

[17] *See* Amendment No. 3.

[18] *See infra* note 28.

III. Comments Received

The Commission received one letter in response to its request for comments on the PSE proposal.[19] The Comment Letter was generally supportive of the PSE's proposal, however, it recommended several changes in the proposed regulatory structure applicable to stock index, currency and currency index warrants. The Comment Letter was submitted on behalf of the Firms, all of whom are represented to be major participants in the issuance, underwriting and trading of warrants. Because the proposed regulatory regime applicable to warrants will, to some extent, be based upon the rules governing standardized options, the Comment Letter states that the Firms' comments are drive, in part, by the fact that fundamental differences exist between warrants and standardized options which necessitate disparate regulatory treatment in certain situations.[20]

First, the Comment Letter suggested amending the Issuer Listing Standards to eliminate the 25% test or, in the alternative, to adopt hedging and/or netting standards designed to more accurately reflect issuer-specific risk.[21] Because warrants are sold by means of a registration statement, the Firms believe that adequate disclosure of the amount of an issuer's outstanding securities could be included in the prospectus. Furthermore, the Comment Letter points out that issuers of warrants are traditionally subject to outside evaluation by certain credit rating agencies, which should assist investors in determining undue issuer credit risk. Finally, the Firms do not believe that 25% test bears any resemblance to an issuer's risk exposure since exposure fluctuates with market changes at any given time and also because the proposal provides no recognition for offsetting hedges or for warrants subject to netting.

In response to the Seward & Kissel Letter's comments respecting issuer listings standards, the PSE amended the filing to add an alternative issuer qualification criteria.[22] Under the new criteria, an issuer will be required to either: (a) have a minimum tangible net worth of $250 million; or (b) meet the existing criteria (*i.e.*, tangible net worth of $150 million and meet the 25% test).

The Comment Letter also recommended allowing the use of p.m. settlement for all American-style warrants exercised anytime except 48 hours prior to expiration, at which time a.m. settlement would be required. According to the Comment Letter, unlike the listed options (where OCC is the issuer and runs a balanced book), a warrant issuer must hedge its exposure to maintain offsetting positions. Upon early exercise of the warrants, the issuer that has hedged its exposure will have to take action to ''unwind'' the portion of its hedge relating to the exercised warrants. The Firms believe that requiring a.m. settlement on the first day after an investor exercises the warrant will place additional market risk upon them due to the difficulty in managing the hedge. This increased hedging cost, the Firm's argue, could result in a higher issuance price for the warrant or could require that the warrant settlement value date be postponed an additional day, with warrant holders hearing additional market risk during this period.

In response to the Comment Letter, the PSE amended its filing to include a provision permitting p.m. settlement for stock index warrants except for a short period before expiration.[23] Under the terms of the amendment, stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the U.S. shall, by their terms, provide that, on valuation date, as well as for the two business days prior to valuation date, the value of the stocks traded primarily in the U.S. which underlie such warrants shall be determined by reference to the opening prices of such underlying U.S. securities. For example, if the valuation date for an issuance of index warrants

[19] *See supra* note 4. The Seward & Kissel Letter was submitted on behalf of PaineWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc. (collectively the ''Firms'').

[20] The Comment Letter lists several differences which it perceives exist between warrants and standardized options. Chief among these are: (1) Warrants are separately registered, unsecured obligations of their issuer while options are issued and guaranteed by the Options Clearing Corp. (''OCC''); (2) during the prospectus delivery period, warrant purchasers received a product-specific prospectus while options customers receive an options disclosure document (''ODD'') at the time the account is opened; (3) each warrant creates a fixed number of outstanding warrants while there is theoretically no limit to the number of options that may be issued by OCC; and (4) warrants are traded on an exchange in a manner similar to stocks which, therefore, translates into superior price transparency than for listed options.

[21] As originally proposed, an issuer would have been required to have a tangible net worth of at least $150 million and the aggregate original issue price of all of a particular issuer's warrant offerings (combined with such offerings by its affiliates) that are listed on a national securities exchange or that are national market securities traded through NASDAQ were not to exceed 25% of the issuer's net worth (''25% test).

[22] *See* Amendment No. 3.

[23] *See* Amendments No. 3 and 5.

occurs on a Friday, a.m. settlement must be utilized for warrants that are valued on the preceding Wednesday or Thursday, as well as on the valuation date.

Third, the Comment Letter recommended creating a special category of ''warrant eligible'' customers (separate and distinct from options eligibility criteria), who are authorized to trade warrants even if not approved to trade options. The Firms believe it is inappropriate to apply an options regulatory regime to warrants and that doing so may prevent institutional customers who are not permitted to purchase options products, yet who nevertheless meet all of the options eligibility criteria, from purchasing warrants. In this regard, the Firms propose to create a ''warrant eligible'' category with standards mimicking those currently required for options approved accounts. As such, ''warrant-approved'' accounts could purchase warrants, however, they could not purchase options or other products requiring options account approval. The PSE did not amend its filing in response to this comment.

Fourth, the Comment Letter urges the adoption of a rule permitting firms to approve for warrant trading those accounts managed by an investment adviser (''IA'') based upon the IA's representation concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the brokerage firms. The PSE has amended its proposal to allow member firms to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed account is not provided to the member firm, where the managed account is for an institutional customer or the investment adviser account represents the collective investment of a number of persons. The PSE states that this will conform the handling of warrant accounts to the current practice with respect to listed options accounts.[24]

Finally, the Comment Letter addressed the proposed position limits applicable to warrants. Specifically, the Comment Letter noted that position limits for warrants would be set at levels that are approximately 75% of that allowed for similar broad-based indexes. The Comment Letter recommended establishing position limits for warrants that were equivalent to those established for listed options, allowing a hedge exemption similar to listed option procedures and providing a mechanism for specific waivers or exemptions of warrant position limits for hedgers, market-makers and broker-dealers comparable to the procedures in place for listed options. The PSE did not amend its filing in response to this comment.

[24] *See* Amendment No. 1.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[25] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing standards for broad-based stock index, currency and currency index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the PSE's proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The PSE's proposed generic listing standards for broad-based stock index warrants, currency and currency indexes set forth a regulatory framework for the listing of such products.[26] Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have a negative market impact. In addition, these standards should address the special risks to customers arising from the derivative products.[27] For the reasons discussed below, the Commission believes the PSE's proposal will provide it with significant flexibility to list index, currency and currency index warrants, without compromising the effectiveness of the Exchange's listing standards or regulatory program for such products.[28]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on

[25] 15 U.S.C. 78f(b)(5) (1982).

[26] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[27] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

[28] Issuances of warrants overlying a single currency may currently be listed for trading without a rule filing provided that the underlying currency is one of the original seven foreign currencies approved for options trading: the Australian Dollar, British Pound, Canadian Dollar, French Franc, German Mark, Japanese Yen, Swiss Franc and the European Currency Unit. Issuances of currency warrants overlying any other foreign currency would require a rule filing pursuant to Section 19(b) of the Act. The Commission notes that currency index warrants may only be established without a further rule filing upon an index that has been previously approved by the Commission pursuant to a Section 19(b) filing. To date, the only currency index approved pursuant to Section 19(b) is an equal-weighted index comprised of the British Pound, Japanese Yen and German Deutsche Mark. *See* Securities Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399 (Dec. 30, 1992). Accordingly, any other currency index (as well as a broad-based stock index) not previously approved by the Commission would require approval pursuant to Section 19(b).

a stock index, currency or currency index permits investors to participate in the price movements of the underlying assets, and allows investors holding positions in some or all of such assets to hedge the risks associated with their portfolios. The Commission further believes that trading warrants on a stock index, currency or currency index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

Warrants, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the Exchange's issuer listing standards that require an issuer to have either; (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency and currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants. Moreover, the alternative test addresses the Comment Letter's concerns on the 25% standard.

The PSE's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) (''domestic index warrants'') are required to utilize a.m. settlement for expiring warrants as well as during the last two business days prior to valuation date.[29] The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, in accordance with the Comment Letter's suggestions, the use of p.m. settlement except during the last two business days prior to a domestic index warrant's valuation date, as well as the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designing their products.[30] In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at settlement. Nevertheless, the Commission expects the Exchange to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the PSE has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with trading in these instruments, in accordance with PSE Rule 9.18(b), and that adequate disclosure of the risks of these products must be made to investors.[31] In addition, the PSE will apply the options rules for suitablilty, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the PSE has addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The PSE has adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index, currency and currency index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period. The Commission believes that this will ensure that certain information about the particular issuance and issuer is publicly available.

As note above, the Comment Letter indicates that applying the options disclosure framework to warrants is inappropriate. However, the Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the Exchange circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

At this time, the Commission does not agree with the proposal contained in the Comment Letter to create a special ''warrant eligible'' classification of purchasers. As noted above, index, currency and currency index warrants are very similar to standardized options. They are so similar that a customer precluded from trading options should not avoid the restriction indirectly by being designated by Exchange rules as eligible for stock index, currency or currency index warrants. Nevertheless, as the range of exchange-traded derivative products increases, the SROs might consider in the future as to whether a new derivatives eligibility classification is appropriate.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard the

[29] Currency and currency index warrants are not limited to a.m. or p.m. settlement.

[30] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

[31] Pursuant to PSE Rule 9.18(b), all options approved accounts must receive an ODD, which discusses the characteristic and risks of standardized options.

Commission notes that the Exchange has developed adequate surveillance procedures for the trading of index and currency warrants. First, new issues of currency warrants will be subject to the PSE's existing surveillance procedures applicable to foreign currency warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses involving the warrant market and the underlying foreign currencies.[32]

Second, the Exchange has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[33] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the Exchange on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the PSE in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Third, the Exchange has developed adequate surveillance procedures to apply to foreign stock index warrants *i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[34] The Commission believes that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement [35] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivatives product and its underlying stocks.[36] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur.[37] In this regard, the PSE will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The Exchange has in place an effective surveillance agreement [38] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard available for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[39] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the PSE has no surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants, currency warrants and currency index warrants will not adversely affect the U.S. securities markets or foreign currency markets. First, with respect to currency and currency index warrants, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active over-the-counter market also exists in options, forwards and swaps for foreign currencies. This minimizes the possibility that Exchange listed warrants would be used to manipulate the spot currency markets. In addition, the surveillance procedures for these products should allow the Exchange to detect and deter potential manipulation involving currency warrants and currency index warrants.

Second, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously determined to be broad-based in the context of index options or warrant trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad based stock index options or warrants will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes the PSE's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Third, the Exchange has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the

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[32] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987), and Securities Exchange Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988). The Commission notes that these surveillance procedures only apply to the issuance of warrants overlying one of the approved foreign currencies. *See supra* note 28. The issuance of warrants upon any other foreign currency would necessitate a Section 19(b) rule filing which, among other things, details applicable to surveillance procedures.

[33] In addition, the Commission notes that issuers will be required to report to the Exchange all trades to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the Exchange to monitor the unwinding activity to determine if it was effected in a manner that violates Exchange or Commission rules.

[34] Each prior issuance of a foreign stock market based index warrant is subject to specific surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[35] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[36] The ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

[37] In the context of domestic index warrants, the Commission notes that the U.S. exchanges are members of the Intermarket Surveillance Group (''ISG''), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[38] *See supra* note 35.

[39] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

Exchange to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve on a permanent basis the proposed spread margin rules.[40]

Fourth, the PSE has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.[41] Contrary to the views expressed in the Comment Letter, the Commission believes that in the absence of trading experience with domestic index warrants, it would be imprudent to establish position limits for positions greater than those currently applicable to domestic stock index options on the same index.[42]

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards covering index, currency or currency index warrants will provide an appropriate regulatory framework for these products. These standards will also benefit the Exchange by providing them with greater flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index or a non-approved currency or currency index. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

The Commission finds good cause for approving Amendments No. 1, 2, 3, 4 and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** for the following reasons. As discussed below, the changes are either (1) Minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures. Accordingly, the amendments do not raise new significant regulatory issues or are responsive to prior comments. In order to enable the Exchange to list new index, currency or currency index warrants as soon as possible, the Commission believes it is necessary and appropriate to approve the amendments on an accelerated basis.

Amendment No. 1 makes several changes to the filing which are designed to bring it into conformity with the other options exchanges. First, it revises Rule 8.3, Listing of Currency and Index Warrants, in several respects to provide uniform issuer listing standards. The first two changes permit the use of p.m. settlement for domestic index warrants (except during the last 48 hours preceding valuation date) and provide an alternative issuer listing qualification criteria (as discussed above under *Issuer Listing Standards and Product Design*). The Commission notes that these changes were made in response to comments received from the Seward & Kissell Letter and further believes these changes provide added flexibility to issuers without compromising investor protection concerns.

Amendment No. 1 also revises Rule 8.3 in two other respects: by limiting the number of foreign securities that may comprise an underlying stock index and by adding a provision requiring an issuer to notify the listing Exchange of early exercises of domestic index warrants. Taken together, the Commission believes these changes further strengthen the issuer listing standards and the Exchange's surveillance procedures to the benefit of warrant investors.

Amendment No. 1 also revises Rule 2.16 to provide that the proposed spread and straddle margin treatment for stock index warrants will be effected as part of a one year pilot program, and to provide that escrow receipts will be accepted to cover short positions in stock index warrants. The Commission notes that these changes conform the margin treatment afforded options and warrants and provide a basis for evaluating pricing correlations between warrants and options overlying the same index, currency or currency index.

Finally, Amendment No. 1 provides that the Exchange will permit member firms to accept an IA's representation concerning the options eligibility status of its customers, as described above. The Commission notes that this practice is consistent with the treatment of options and, therefore, raises no new or unique regulatory issues. Accordingly, for the reasons discussed above relating to each proposed revision of the Amendment, the Commission believes it is appropriate to approve Amendment No. 1 to the Exchange's proposal on an accelerated basis.

Amendment No. 2 addresses currency or currency index warrant margin to clarify which currencies are subject to a four percent ''add-on'' for margin purposes. The Commission notes that this revision simply harmonizes the treatment afforded currency options and warrants. Second, the amendment states that the applicable margin level for currency index warrants will be a percentage as specified by the exchange and approved by the Commission. This change is also consistent with the treatment afforded currency index options, where margin levels are established on a case by case basis. Accordingly, the Commission believes it is appropriate to approve Amendment No. 2 on an accelerated basis.

Amendment No. 3 to the proposal clarifies several issues relating to a.m. settlement, position reporting and notification of early exercise of warrants. First, the Amendment clarifies in PSE Rule 8.3(a)(5) that a.m. settlement will be used during the 48-hour period prior to expiration of index warrants. The Commission notes that this change simply codifies a provision the PSE previously agreed to in Amendment No. 1.[43] Next, the Amendment establishes that warrant positions will be subject to reporting levels, initially set at 100,000 warrants. The Commission believes that requiring investors to report to the Exchange when their holdings exceed specified levels should aid the Exchange in its monitoring for potential trading abuses involving index, currency and currency

[40] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the Exchange and approved by the SEC. *See* Amendment No. 2. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[41] The Commission notes that there are no position or exercise limits applicable to currency or currency index warrants, although reporting requirements do apply. Nevertheless, the Commission may review the need to establish foreign currency position limits if the size of the currency or currency index warrant market increases significantly.

[42] With respect to the Comment Letter's suggestion that a hedge exemption rule be established in order to allow participants to readily acquire exemptions from the Exchange as needed, the Commission does not believe that such an approach is appropriate at this time. The hedge exemption for index options was adopted after several years experience with index options trading. Until the SROs gain some experience with domestic index warrant trading, it is difficult to determine the need for a hedge exemption (*i.e.*, that speculative limits are insufficient to meet hedging needs).

[43] Amendment No. 5 subsequently changes the language of this provision to require a.m. settlement be used during the two business days prior to valuation date.

index warrants. Also, the Amendment addresses surveillance related matters. In particular, it provides that issuers must report all hedge unwinding transactions related to the early exercise of domestic index warrants to the listing exchange by the business day following trade date (''T+1'').[44] In addition, it requires issuers to notify the listing exchange of any early exercises of index warrants by 4:30 p.m. (New York time) on settlement date for the warrants. The Commission believes this change to the PSE's surveillance procedures strengthens the Exchange's monitoring of index warrants. Accordingly, the Commission believes it is appropriate to approve Amendment No. 3 on an accelerated basis.

Amendment No. 4 deletes a transaction reporting requirement which will be revised and incorporated into the Exchange's surveillance procedures and also makes other minor changes. As such, the Commission does not believe the Amendment raises any new or unique regulatory issues. Accordingly, the Commission believes it is appropriate to approve Amendment No. 4 on an accelerated basis.

Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised at or prior to expiration. Specifically, the Amendment clarifies that a.m. settlement will be required on valuation date as well as during the last two business days prior to an index warrant's valuation date. As discussed above, the Commission believes that the use of a.m. settlement during this period will help to ameliorate any potential price effects associated with expirations of derivative index products. Accordingly, the Commission believes it is appropriate to approve Amendment No. 5 on an accelerated basis. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments No. 1, 2, 3, 4 and 5 to the PSE's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, 2, 3, 4 and 5. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–PSE–94–28) is approved, as amended, with the portion of the rule change relating to spread margin treatment being approved on a one year pilot program basis, ending August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

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[44] The Commission notes that Amendment No. 4 removes this transaction reporting requirement which will be incorporated into the Exchange's surveillance procedures.

[45] 15 U.S.C. 78s(b)(2) (1988).

[46] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36167; File No. SR–Phlx–94–49]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1, 2, 3, and 4 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

I. Introduction

On November 30, 1994, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) (''Section 19(b)'') of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to establish uniform rules for the listing and trading of stock index (''index'' or ''stock index''), currency (''currency'') and currency index (''currency index'') warrants (collectively ''warrants''). Notice of the proposed rule change appeared in the **Federal Register** on December 20, 1994.[3] One comment letter was received in response to the proposal.[4]

The Exchange subsequently filed four Amendments to the proposal.[5] Amendment No. 1 brings several of Phlx's proposed rules and policies into conformity with those previously filed by other markets. Amendment No. 2, in addition to responding to several technical changes requested by the staff, addresses currency and currency index warrant margin levels and settlement methodology. Amendment No. 3, in addition to addressing issues relating to reporting requirements and notification of early exercises, removes certain surveillance procedures from the Phlx's rules. Amendment No. 4 clarifies the settlement procedures for index warrants which are exercised at or prior to expiration. This order approves the proposal, as amended.

II. Description of the Proposal

The Phlx proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.[6] Rule 803, Criteria for Listing, would be amended to provide uniform listing criteria for index, currency and currency index warrants. First, issuers would be expected to exceed minimum issuer listing standards. In particular, the Exchange proposes that issuers be required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35090 (Dec. 12, 1994), 59 FR 65556.

[4] *See* Letter from Paul M. Gottlieb, Seward & Kissel, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 (''Comment Letter'' or ''Seward & Kissel Letter'').

[5] *See* Letters from Michele R. Weisbaum, Phlx, to Michael Walinskas, SEC, dated May 24, 1995, (''Amendment No. 1'') and to Stephen M. Youhn, SEC, dated June 26, 1995 (''Amendment No. 2''), August 4, 1995 (''Amendment No. 3''), and August 25, 1995 (''Amendment No. 4'').

[6] The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may only be exercised during a specified period before expiration).

through NASDAQ exceeds 25% of the issuer's net worth.[7]

Second, the proposal requires that unexercised in-the-money warrants be automatically exercised on either the delisting date (if the issue is not listed upon another organized securities market) or upon expiration. Third, the proposal provides that for warrant offerings where U.S. stocks constitute 25% or more of the index value (''domestic index''), issuers shall use opening prices (''a.m. settlement'') for U.S. stocks to determine index warrant settlement values during the 48 hour period prior to expiration of the warrants.[8] Fourth, Rule 803(e)(5) has been amended to provide that foreign country securities or American Depositary Receipts (''ADRs'') thereon that are not subject to a comprehensive surveillance sharing agreement with the Exchange and that have less than 50% of their global trading volume (in dollar value) within the U.S., shall not represent more than 20% of the weight of the index.[9] Finally, the Exchange proposes to add Rule 803(e)(6), which is designed to assist in the surveillance of index warrant trading. Specifically, the Exchange of any early exercises by 4:30 p.m. (New York time) on the day that the settlement value for the warrants is determined.[10]

Proposed Rule 722 (''Rule 22''), the Phlx margin rule, is being amended to apply the current customer margin requirements for broad based stock index and currency options to stock index, currency and currency index warrants. Thus, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, but to a minimum of ten percent of the index value. Short sales of currency warrants will follow the margin requirements currently applicable to listed currency options. Specifically, the Exchange proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall each be subject to a margin level of 100% of the current market value of each such warrant plus a four percent ''add-on.'' [11] The margin required on currency index warrants would be an amount as determined by the Exchange and approved by the Commission.[12] The Exchange also proposes that its stock index, currency and currency index warrant margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the Exchange proposes that index, currency and currency index warrants may be offset with either warrants or Options clearing Corporation (''OCC'') issued options on the same index, currency or currency index, respectively. Furthermore, the Exchange has proposed that subsection (c)(2)(F)(i) of Rule 722, to the extent that such rules concern spread and straddle positions in warrants, be subject to a one year pilot basis.[13] Finally, proposed Rule 722(c)(2)(G)(v) will also permit the use of escrow receipts to cover a short call position in a broad-based stock index warrant.[14]

Proposed Rule 1024 states that no member or member organization shall accept an order from a customer for the purchase or sale of warrants unless the customer's account has been approved for options trading. Furthermore, Rules 1025–1027 and 1070, pertaining to suitability, discretionary account trading, supervision of accounts and customer complaints will be applied to transactions in warrants.

Existing Rule 1049 will apply to warrants and require approval by a Compliance Registered Options Principal of all advertisements, sales literature and educational material issued by a member organization pertaining to warrants. The rule further requires Exchange approval of all advertisements and educational materials pertaining to warrants. Finally, prior to trading index, currency or currency index warrants, the Exchange will distribute circulars to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in warrants.

Phlx Rule 1001 is being amended to provide that position limits for stock index warrants on the same index with original issue prices of ten dollars or less will be fifteen million warrants covering all such issues.[15] The rule also provides that warrants with an original issue price of ten dollars or more will be weighted more heavily than warrants with an original issue price of ten dollars or less in calculating position limits.[16] The rule also gives the Exchange the authority to require the liquidation of a position in stock index warrants that is in excess of the position limits set forth in the rule, and Commentary to the rule establishes procedures for allowing limited exceptions to the position limits.

Rule 1002 is being amended to provide for exercise limits on stock index warrants that are analogous to those found in stock index options and states that such limits are distinct from any exercise limits that may be imposed by the issuers of stock index warrants. Accordingly, no member may exercise a long position in warrants over a five consecutive day period in excess of the permissible position limit.

In order to facilitate its review of compliance with position and exercise limits, the Exchange is amending Rule 1003 to establish reporting requirements for large warrant positions. Under the terms of the rule, members will be required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position of 100,000 warrants overlying the same index, currency or currency index. For purposes of this rule, the Exchange proposes that long positions in puts be combined with short positions in call warrants, and that short positions in puts be combined with long positions in call warrants.[17] Finally, Rule 1047A regarding trading halt provisions is being amended to indicate that it also will apply to the trading of warrants.

Upon Commission approval of the foregoing rule amendments, the Exchange proposes that it will only file rule changes for specific stock index

[7] *See* amendments No. 1 and 2. The Exchange amended this provision in response to the Seward & Kissell Letter.

[8] *See* Amendments No. 2. The Exchange amended its proposal in response to the Seward & Kissell Letter and notes that a warrant based upon a domestic U.S. stock index may be settled using closing prices (''p.m. settlement'') for the underlying stocks at all times except for valuation day and the two business days immediately preceding valuation day.

[9] *See* Amendments No. 1 and 2.

[10] *See* Amendment No. 3.

[11] *See* Amendment No. 2. Consistent with the treatment of options on foreign currencies, warrants on the Canadian Dollar will be subject to a one percent ''add-on.'' The margin required on any other foreign currency would be subject to approval by the Commission. *See infra* note 28.

[12] *See infra* note 28.

[13] Three months prior to the expiration of the pilot program, the Exchange will submit a report to SEC staff analyzing the price relationship between listed warrants and options on similar stock indexes. *See* Amendment No. 1. The Exchange has also requested no-action relief from the Commission in order to permit certain short positions in stock index call and put warrants to be treated as covered for margin purposes.

[14] *See* Amendment No. 1. The Exchange notes that this treatment is consistent with the rules that allow for the use of escrow receipts to cover a short call position in broad-based stock index options.

[15] *See infra* note 41.

[16] For example, if an investor held 100,000 warrants based upon the Standard & Poor's 500 Index offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000.

[17] *See* Amendment No. 2.

warrant issuances where there is no corresponding option or warrant on the same underlying stock index already listed on a national securities exchange or NASDAQ. Accordingly, when a listed option overlies a particular broad based index, the Exchange proposes it be allowed to list warrants on that index without further Commission review and approval pursuant to Section 19(b) of the Act, as long as the listing complies with the warrant listing standards as approved in this Order.[18]

III. Comments Received

The Commission received one letter in response to its request for comments on the Phlx proposal.[19] The Comment Letter was generally supportive of the Phlx's proposal, however, it recommended several changes in the proposed regulatory structure applicable to stock index, currency and currency index warrants. The Comment Letter was submitted on behalf of the Firms, all of whom are represented to be major participants in the issuance, underwriting and trading of warrants. Because the proposed regulatory regime applicable to warrants will, to some extent, be based upon the rules governing standardized options, the Comment Letter states that the Firms' comments are driven, in part, by the fact that fundamental differences exist between warrants and standardized options which necessitate disparate regulatory treatment in certain situations.[20]

First, the Comment Letter suggested amending the Issuer Listing Standards to eliminate the 25% test or, in the alternative, to adopt hedging and/or netting standards designed to more accurately reflect issuer-specific risk.[21] Because warrants are sold by means of a registration statement, the Firms believe that adequate disclosure of the amount of an issuer's outstanding securities could be included in the prospectus. Furthermore, the Comment Letter points out that issuers of warrants are traditionally subject to outside evaluation by certain credit rating agencies, which should assist investors in determining undue issuer credit risk. Finally, the Firms do not believe the 25% test bears any resemblance to an issuer's risk exposure since exposure fluctuates with market changes at any given time and also because the proposal provides no recognition for offsetting hedges or for warrants subject to netting.

In response to the Seward & Kissell Letter's comments respecting issuer listings standards, the Phlx amended the filing to add an alternative issuer qualification criteria.[22] Under the new criteria, an issuer will be required to either: (a) have a minimum tangible net worth of $250 million; or (b) meet the existing criteria (*i.e.*, tangible net worth of $150 million and meet the 25% test).

The Comment Letter also recommended allowing the use of p.m. settlement for all American-style warrants exercised anytime except 48 hours prior to expiration, at which time a.m. settlement would be required. According to the Comment Letter, unlike with listed options (where OCC is the issuer and runs a balanced book), a warrant issuer must hedge its exposure to maintain offsetting positions. Upon early exercise of the warrants, the issuer that has hedged its exposure will have to take action to ''unwind'' the portion of its hedge relating to the exercised warrants. The Firms believe that requiring a.m. settlement on the first day after an investor exercises the warrant will place additional market risk upon them due to the difficulty in managing the hedge. This increased hedging cost, the Firms argue, could result in a higher issuance price for the warrant or could require that the warrant settlement value date be postponed an additional day, with warrant holders bearing additional market risk during this period.

In response to the Comment Letter, the Phlx amended its filing to include a provision permitting p.m. settlement for stock index warrants except for a short period before expiration.[23] Under the terms of the amendment, stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the U.S. shall, by their terms, provide that, on valuation date, as well as for the two business days prior to valuation date, the value of the stocks traded primarily in the U.S. which underlie such warrants shall be determined by reference to the opening prices of such underlying U.S. securities. For example, if the valuation date for an issuance of index warrants occurs on a Friday, a.m. settlement must be utilized for warrants that are valued on the preceding Wednesday or Thursday, as well as on the valuation date.

Third, the Comment Letter recommended creating a special category of ''warrant eligible'' customers (separate and distinct from options eligibility criteria), who are authorized to trade warrants even if not approved to trade options. The Firms believe it is inappropriate to apply an options regulatory regime to warrants and that doing so may prevent institutional customers who are not permitted to purchase options products, yet who nevertheless meet all of the options eligibility criteria, from purchasing warrants. In this regard, the Firms propose to create a ''warrant eligible'' category with standards mimicking those currently required for options approved accounts. As such, ''warrant-approved'' accounts could purchase warrants, however, they could not purchase options or other products requiring options account approval. The Phlx did not amend its filing in response to this comment.

Fourth, the Comment Letter urges the adoption of a rule permitting firms to approve for warrant trading those accounts managed by an investment adviser (''IA'') based upon the IA's representation concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the brokerage firms. The Phlx has amended its proposal to allow member firms to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed account is not provided to the member firm, where the managed account is for an institutional customer or the investment advisor account represents the collective investment of a number of persons. The Phlx states that this will conform the

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[18] *See infra* note 28.

[19] *See supra* note 4. The Seward & Kissel Letter was submitted on behalf of PaineWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc. (collectively the ''Firms'').

[20] The Comment Letter lists several differences which it perceives exist between warrants and standardized options. Chief among these are: (1) warrants are separately registered, unsecured obligations of their issuer while options are issued and guaranteed by the Options Clearing Corp. (''OCC''); (2) during the prospectus delivery period, warrant purchasers receive a product-specific prospectus while options customers receive an options disclosure document (''ODD'') at the time the account is opened; (3) each warrant creates a fixed number of outstanding warrants while there is theoretically no limit to the number of options that may be issued by OCC; and (4) warrants are traded on an exchange in a manner similar to stocks which, therefore, translates into superior price transparency than for listed options.

[21] As originally proposed, an issuer would have been required to have a tangible net worth of at least $150 million and the aggregate original issue price of all of a particular issuer's warrant offerings (combined with such offerings by its affiliates) that are listed on a national securities exchange or that are national market securities traded through NASDAQ were not to exceed 25% of the issuer's net worth (''25% test'').

[22] *See* Amendment No. 1.

[23] *See* Amendments No. 2 and 4.

handling of warrant accounts to the current practice with respect to listed options accounts.[24]

Finally, the Comment Letter addressed the proposed position limits applicable to warrants. Specifically, the Comment Letter noted that position limits for warrants would be set at levels that are approximately 75% of that allowed for similar broad-based indexes. The Comment Letter recommended establishing position limits for warrants that were equivalent to those established for listed options, allowing a hedge exemption similar to listed option procedures and providing a mechanism for specific waivers or exemptions of warrant position limits for hedgers, market-makers and broker-dealers comparable to the procedures in place for listed options. The Phlx did not amend its filing in response to this comment.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[25] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing standards for broad-based stock index, currency and currency index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the Phlx's proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The Phlx's proposed generic listing standards for broad-based stock index warrants, currency and currency indexes set forth a regulatory framework for the listing of such products.[26] Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have a negative market impact. In addition, these standards should address the special risks to customers arising from the derivative products.[27] For the reasons discussed below, the Commission believes the Phlx's proposal will provide it with significant flexibility to list index, currency and currency index warrants, without compromising the effectiveness of the Exchange's listing standards or regulatory program for such products.[28]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on a stock index, currency or currency index permits investors to participate in the price movements of the underlying assets, and allows investors holding positions in some or all of such assets to hedge the risks associated with their portfolios. The Commission further believes that trading warrants on a stock index, currency or currency index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

Warrants, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the Exchange's issuer listing standards that require an issuer to have either; (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency and currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants. Moreover, the alternative test addresses the Comment Letter's concerns on the 25% standard.

The Phlx's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) (''domestic index warrants'') are required to utilize a.m. settlement for expiring warrants as well as during the last two business

[24] *See* Amendment No. 1.

[25] 15 U.S.C. § 78f(b)(5) (1982).

[26] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[27] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

[28] Issuances of warrants overlying a single currency may currently be listed for trading without a rule filing provided that the underlying currency is one of the original seven foreign currencies approved for options trading: the Australian Dollar, British Pound, Canadian Dollar, French Franc, German Mark, Japanese Yen, Swiss Franc and the European Currency Unit. Issuances of currency warrants overlying any other foreign currency would require a rule filing pursuant to Section 19(b) of the Act. The Commission notes that currency index warrants may only be established without a further rule filing upon an index that has been previously approved by the Commission pursuant to a Section 19(b) filing. To date, the only currency index approved pursuant to Section 19(b) is an equal-weighted index comprised of the British Pound, Japanese Yen and German Deutsche Mark. *See* Securities Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399 (Dec. 30, 1992). Accordingly, any other currency index (as well as a broad-based stock index) not previously approved by the Commission would require approval pursuant to Section 19(b).

days prior to valuation date.[29] The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, in accordance with the Comment Letter's suggestions, the use of p.m. settlement except during the last two business days prior to a domestic index warrant's valuation date, as well as the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designing their products.[30] In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at settlement. Nevertheless, the Commission expects the Exchange to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the Phlx has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with trading in these instruments, in accordance with Phlx Rule 1024, and that adequate disclosure of the risks of these products must be made to investors.[31] In addition, the Phlx will apply the options rules for suitability, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the Phlx has addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The Phlx has adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index, currency and currency index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period. The Commission believes that this will ensure that certain information about the particular issuance and issuer is publicly available.

As noted above, the Comment Letter indicates that applying the options disclosure framework to warrants is inappropriate. However, the Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the Exchange circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

At this time, the Commission does not agree with the proposal contained in the Comment Letter to create a special ''warrant eligible'' classification of purchasers. As noted above, index, currency and currency index warrants are very similar to standardized options. They are so similar that a customer precluded from trading options should not avoid the restriction indirectly by being designated by Exchange rules as eligible for stock index, currency or currency index warrants. Nevertheless, as the range of exchange-traded derivative products increases, the SROs might consider in the future as to whether a new derivatives eligibility classification is appropriate.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard the Commission notes that the Exchange has developed adequate surveillance procedures for the trading of index and currency warrants. First, new issues of currency warrants will be subject to the Phlx's existing surveillance procedures applicable to foreign currency warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses involving the warrant market and the underlying foreign currencies.[32]

Second, the Exchange has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[33] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the Exchange on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the Phlx in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Third, the Exchange has developed adequate surveillance procedures to apply to foreign stock index warrants (*i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[34] The Commission believes

[29] Currency and currency index warrants are not limited to a.m. or p.m. settlement.

[30] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

[31] Pursuant to Phlx Rule 1024, all options approved accounts must receive an ODD, which discusses the characteristic and risks of standardized options.

[32] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987), and Securities Exchange Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988). The Commission notes that these surveillance procedures only apply to the issuance of warrants overlying one of the approved foreign currencies. *See supra* note 28. The issuance of warrants upon any other foreign currency would necessitate a Section 19(b) rule filing which, among other things, details applicable surveillance procedures.

[33] In addition, the Commission notes that issuers will be required to report to the Exchange all trades to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the Exchange to monitor the unwinding activity to determine if it was effected in a manner that violates Exchange or Commission rules.

[34] Each prior issuance of a foreign stock market based index warrant is subject to specific

Continued

that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement [35] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivative product and its underlying stocks.[36] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur.[37] In this regard, the Phlx will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The Exchange has in place an effective surveillance agreement [38] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[39] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the Phlx has no surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants, currency warrants and currency index warrants will not adversely affect the U.S. securities markets or foreign currency markets. First, with respect to currency and currency index warrants, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active over-the-counter market also exists in options, forwards and swaps for foreign currencies. This minimizes the possibility that Exchange listed warrants would be used to manipulate the spot currency markets. In addition, the surveillance procedures for these products should allow the Exchange to detect and deter potential manipulation involving currency warrants and currency index warrants.

Second, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously determined to be broad-based in the context of index options or warrant trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad based stock index options or warrants will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes the Phlx's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Third, the Exchange has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the Exchange to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve on a permanent basis the proposed spread margin rules.[40]

Fourth, the Phlx has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.[41] Contrary to the views expressed in the Comment Letter, the Commission believes that in the absence of trading experience with domestic index warrants, it would be imprudent to establish position limits for positions greater than those currently applicable to domestic stock index options on the same index.[42]

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards covering index, currency and currency index warrants will provide an appropriate regulatory framework for these products. These standards will also benefit the Exchange by providing them with greater

surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[35] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[36] The ability to obtain relevant surveillance information, including, among other things, the identify of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

[37] In the context of domestic index warrants, the Commission notes that the U.S. exchanges are members of the Intermarket Surveillance Group (''ISG''), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[38] *See supra* note 35.

[39] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

[40] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the Exchange and approved by the SEC. *See* Amendment No. 2. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[41] The Commission notes that there are no position or exercise limits applicable to currency or currency index warrants, although reporting requirments do apply. Nevertheless, the Commission may review the need to establish foreign currency position limits if the size of the currency or currency index warrant market increases significantly.

[42] WIth respect to the Comment Letter's suggestion that a hedge exemption rule be established in order to allow participants to readily acquire exemptions from the Exchange as needed, the Commission does not believe that such an approach is appropriate at this time. The hedge exemption for index options was adopted after several years experience with index options trading. Until the SROs gain some experience with domestic index warrant trading, it is difficult to determine the need for a hedge exemption (*i.e.*, that speculative limits are insufficient to meet hedging needs).

flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index or a non-approved currency or currency index. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

The Commission finds good cause for approving Amendments No. 1, 2, 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** for the following reasons. As discussed below, the changes are either: (1) Minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures. Accordingly, the amendments do not raise new significant regulatory issues or are responsive to prior comments. In order to enable the Exchange to list new index, currency or currency index warrants as soon as possible, the Commission believes it is necessity and appropriate to approve the amendments on an accelerated basis.

Amendment No. 1 makes several changes to the filing which are designed to bring it into conformity with the other options exchanges. First, it revises Rule 803, Criteria for Listing, to permit alternative issuer listing qualification criteria (as discussed above under *Issuer Listing Standards and Product Design*). Second, it limits the number of foreign securities that may comprise an underlying stock index. The Commission notes that the issuer qualification amendment was made in response to comments received from the Seaward & Kissell Letter and further believes that both changes provide added flexibility to issuers without compromising investor protection concerns.

Amendment No. 1 also revises Rule 722 to provide that the proposed spread and straddle margin treatment for stock index warrants will be effected as part of a one year pilot program, and to provide that escrow receipts will be accepted to cover short positions in stock index warrants. The Commission notes that these changes conform the margin treatment afforded options and warrants and provide a basis for evaluating pricing correlations between warrants and options overlying the same index, currency or currency index.

Finally, Amendment No. 1 provides that the Exchange will distribute an information circular to its members upon new warrant listings and that it will permit member firms to accept an IA's representation concerning the options eligibility status of its customers, as described above. The Commission notes that both of these practices are consistent with the treatment of options and, therefore, raise no new or unique regulatory issues. Accordingly, for the reasons discussed above relating to each proposed revision of the Amendment, the Commission believes it is appropriate to approve Amendment No. 1 to the Exchange's proposal on an accelerated basis.

Amendment No. 2 to the proposal clarifies several issues relating to a.m. settlement, currency index warrant margin and position reporting for currency warrants. First, the Amendment clarifies that a.m. settlement will be used during the 48 hour period prior to expiration of index warrants.[43] Second, the Amendment clarifies that the applicable margin level for currency index warrants will be a percentage as specified by the Exchange and approved by the Commission. The Commission notes that this revision is consistent with the treatment afforded currency index options, where margin levels are established on a case by case basis. Finally, the Amendment establishes that index, currency and currency index warrants will be subject to the same reporting levels. The Commission notes that this revision helps to provide uniformity in the regulatory treatment of warrants. Furthermore, because currency and currency index warrants are not subject to position and exercise limits, the Commission believes that requiring investors to report to the Exchange when their holdings exceed specified levels should aid the Exchange in its monitoring for potential trading abuses involving currency and currency index warrants. Accordingly, the Commission believes it is appropriate to approve Amendment No. 2 on an accelerated basis.

Amendment No. 3 requires issuers to notify the listing exchange of any early exercises of index warrants by 4:30 p.m. (New York time) on settlement date for the warrants. The Commission believes this changes to the Phlx's surveillance procedures strengthens the Exchange's monitoring of index warrants. Accordingly, the Commission believes it is appropriate to approve Amendment No. 3 on an accelerated basis.

Amendment No. 4 clarifies the settlement procedures for index warrants which are exercised prior to expiration. Specifically, the Amendment clarifies that a.m. settlement will be required on valuation date as well as during the last two business days prior to an index warrant's valuation date. As discussed above, the Commission believes that the use of a.m. settlement during this period will help to ameliorate any potential price effects associated with expirations of derivative index products. Accordingly, the Commission believes it is appropriate to approve Amendment No. 4 on an accelerated basis.

Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments No. 1, 2, 3 and 4 to the Phlx's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, 2, 3 and 4. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

[43] Amendment No. 4 subsequently changes the language of this provision to require a.m. settlement be used during the two business days prior to valuation date.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–Phlx–94–49) is approved, as amended.[45] Furthermore, the portion of the rule change relating to spread margin treatment is approved on a one year pilot program basis, effective from the date of this Order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22106 Filed 9–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21330; File No. 812–9468]

Keyport Life Insurance Company, et al.

August 31, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Keyport Life Insurance Company (''Keyport''), KMA Variable Account (''KMA Account''), Keyport Variable Account I (''Variable Account I''), Independence Life and Annuity Company (formerly, Keyport America Life Insurance Company, ''Keyport America''),[1] Independence Variable Annuity Separate Account (formerly, Keyport America Variable Annuity Separate Account, ''KA VA Account''), Independence Variable Life Separate Account (formerly, Keyport America Variable Life Separate Account, ''KA VLI Account''), Liberty Life Assurance Company of Boston (''Liberty Life'') and Variable Account-K (''Account K'').

RELEVANT 1940 ACT SECTIONS: Approval requested under Section 26(b) and exemption requested under Section 17(b) from Section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the Managed Assets Fund (''MAF'') for shares of the Strategic Managed Assets Fund (''SMAF''), each of which is a portfolio of SteinRoe Variable Investment Trust (''SteinRoe Trust''); shares of SteinRoe Trust's Mortgage Securities Income Fund (''MSIF'') for shares of the Colonial-Keyport U.S. Government Fund (''USGF'') of Keyport Variable Investment Trust (''Keyport Trust''); and shares of Keyport Trust's Colonial-Keyport Strategic Income Fund (''SIF'') for shares of SteinRoe Trust's Managed Income Fund (''MIF'') (the ''Substitution'').

FILING DATE: The application was filed on February 6, 1995 and amended on August 30, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on September 25, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o James Klopper, Esq., Keyport Life Insurance Company, 125 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Keyport is a stock life insurance company and an indirect majority-owned subsidiary of Liberty Mutual Insurance Company (''Liberty Mutual''). Among Liberty Mutual's other indirect subsidiaries are the investment advisory firm of SteinRoe & Farnham Incorporated (''SteinRoe''), which is the adviser to SteinRoe Trust, and Keyport Advisory Services Corp. (''Keyport Advisory''), which is the adviser to Keyport Trust. Keyport offers fixed individual life insurance and individual and group fixed and variable immediate and deferred annuity contracts on a non-participating basis. Keyport currently is not offering new variable life insurance policies.

2. Keyport America is a stock life insurance company and a wholly-owned subsidiary of Keyport. Keyport America is authorized to transact life insurance and annuity business in all states, except New York, and in the District of Columbia. Keyport America is not currently offering new variable annuity contracts or variable life insurance policies.

3. Liberty Life is a stock life insurance company and a wholly-owned subsidiary of Liberty Mutual and Liberty Mutual Fire Insurance Company. Liberty Life offers individual life insurance and group life and health insurance and individual and group annuity contracts.

4. MAF, MSIF and SIF (collectively, ''Substitute Funds'') and SMAF, USGF and MIF, together with other portfolios of SteinRoe Trust and Keyport Trust, serve as eligible funding vehicles (''Eligible Funds'') for certain flexible premium variable annuity contracts (''Contracts'') offered by KMA Account and Account-K and previously offered by KA VA Account and certain single premium variable life insurance policies (''Policies'') previously offered by Variable Account I and KA VLI Account (collectively, ''Accounts'').

5. The Accounts are segregated investment accounts registered under the 1940 Act as unit investment trusts. Each Account is divided into sub-accounts (''Sub-accounts'') each of which invests in the corresponding portfolio of SteinRoe Trust (including MAF, SMAF, MSIF, and MIF), or Keyport Trust (including USGF and SIF). KMA Account serves as the funding medium for certain variable annuity Contracts issued and administered by Keyport. Variable Account I was established to fund certain individual single premium variable life insurance Policies previously offered by Keyport. KA VA Account was established to fund certain variable annuity Contracts previously offered by Keyport America. KA VLI Account was established to fund certain individual single premium variable life insurance Policies previously offered by Keyport America. Account-K serves as the funding medium for certain variable annuity Contracts issued and administered by Liberty Life. Keyport Financial Services Corp., a subsidiary of Keyport, serves as principal underwriter for the Contracts and Policies.

6. The Contracts offered by KMA Account and the Contracts previously

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[44] 15 U.S.C. § 78s(b)(2) (1988).

[45] The Commission notes that prior to listing any stock index, currency or currency index warrants, the Exchange will be required to obtain approval from the staff of the Commission concerning the Exchange's surveillance procedures applicable to the trading of warrants.

[46] 17 CFR § 200.30–3(a)(12) (1994).

[1] Keyport America Variable Life Insurance Company changed its name on July 13, 1995. To avoid confusion and effect a smooth transition, the company and its separate accounts may continue to use the name ''Keyport America'' for a period of time.

offered by KA VA Account provide for allocation to the Sub-accounts that invest in each of the portfolios of SteinRoe Trust and each of the portfolios of Keyport Trust. The Contracts offered by Account-K provide for investment in the Sub-Accounts that invest in each of the portfolios of SteinRoe Trust and five of the portfolios of Keyport Trust, including USGF and SIF. Keyport America is not actively offering the Contracts funded through KA VA Account.

7. The Policies previously offered by Variable Account I and by KA VLI Account provide for allocation to the Sub-accounts that invest in each of the portfolios of SteinRoe Trust and each of the portfolios of Keyport Trust. Neither Keyport nor Keyport America is actively offering the Policies funded through Variable Account I or KA VLI Account, respectively.

8. Established in connection with the sale of Keyport to Liberty Mutual by the Travelers Insurance Company of Hartford, Connecticut, the SteinRoe Trust is a series type investment company registered with the Commission on Form N–1A. SteinRoe Trust currently has seven investment portfolios (''SteinRoe Trust's Funds'') that have differing investment objectives, policies and restrictions.

9. Keyport Trust is a registered series type investment company that currently has six investment portfolios (collectively, with SteinRoe Trust's Funds, ''Funds''), that have differing investment objectives, policies and restrictions.

10. Applicants state that SMAF, USGF and MIF, as individual investment alternatives, have not generated the interest of owners of Contracts (''Contract Owners'') or owners of Policies (''Policy Owners'') (collectively ''Owners'') that was anticipated at the time of their creation. Also, overall variable product sales by Keyport, Keyport America and Liberty Life have not generated the volume of assets sufficient to make every investment alternative viable. According to the Applicants, in the one-year period ended December 31, 1994, the assets of SMAF attributable to Owners only increased by approximately $2.0 million, the assets of USFG attributable to Owners decreased by approximately $1.6 million, and the assets of MIF attributable to Owners decreased by approximately $10.7 million.

11. MAF, MSIF and SIF are currently available in connection with new purchases and transfers under the Contracts offered by KMA Account and Account-K, the Contracts previously offered by KA VA Account, and the Policies previously offered by Variable Account I and KA VLI Account. Applicants represent that Owners have received current prospectuses or prospectus supplements for the SteinRoe Trust and the Keyport Trust that include information concerning all Eligible Funds, including MAF, MSIF and SIF.

12. Applicants state that, on December 31, 1994, the assets attributable to Owners of each of the Funds expected to be eliminated were relatively small, i.e., approximately $59.1 million in SMAF, approximately $29.2 million in USGF and approximately $42.4 million in MIF. In addition, none of these Funds have generated a sufficient level of Owner interest to justify their high expense ratios. Applicants state that the assets of USGF and MIF declined during the year ended December 31, 1994 and the assets of SMAF increased by only approximately $2.0 million. Moreover, Applicants further state that none of these Funds have generated sufficient Owner interest to justify the expense reimbursements that SteinRoe and Keyport Advisory have assumed with respect to the Funds. Applicants believe that it is not in the public interest to continue to utilize SMAF, USGF and MIF as funding vehicles for the Contracts and Policies and that they can better serve the interests of Owners by utilizing investment alternatives that they believe may be better suited to the needs and interests of Owners.

13. Keyport, Keyport America and Liberty Life, on their own behalf and on behalf of the Accounts, propose to effect a substitution of shares of MAF for all shares of SMAF, shares of MSIF for all shares of USGF, and shares of SIF for all shares of MIF attributable to the Contracts and Policies. Keyport, Keyport America and Liberty Life have undertaken to pay all expenses and transaction costs associated with the Substitution, including any applicable brokerage commissions. On February 7, 1995, Keyport, Keyport America and Liberty Life supplemented the prospectuses of their respective Accounts to reflect the proposed Substitution (''Supplements''). The Supplements were sent to Owners. Keyport, Keyport America and Liberty Life will schedule the Substitution to occur as soon as practicable following the issuance of the order so as to maximize the benefits to be realized from the Substitution. Within five days after the Substitution, Keyport, Keyport America and Liberty Life will send to Owners written notice of the Substitution (the ''Notice'') that identifies the shares of the Funds that have been eliminated and the shares of the Funds that have been substituted. Keyport, Keyport America and Liberty Life will include in such mailing the supplements to the prospectuses for the Accounts that disclose the completion of the Substitution.

14. Owners will be advised in the Notice that for a period of thirty days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available Sub-account, without limitation and without charge. Moreover, any transfers of all available assets from SMAF, USGF and MIF from the date of the Supplements will not be counted as transfer requests under any contractual provisions of the Contracts or Policies that limit allowable transfers. The period from the date of the Supplements to thirty days from the mailing of the Notice is referred to herein as the ''Free Transfer Period.'' Following the Substitution, Owners will be afforded the same contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts and Policies as they currently have. Immediately following the Substitution, Keyport, Keyport America and Liberty Life, as appropriate, will combine: (i) The Sub-account invested in SMAF with the continuing Sub-account invested in MAF; (ii) the Sub-account invested in USGF with the continuing Sub-account invested in MSIF; and (iii) the Sub-account invested in MIF with the continuing Sub-account invested in SIF. Keyport, Keyport America and Liberty Life each will reflect this treatment in disclosure documents for their respective Accounts, the Financial Statements of their respective Accounts, the Financial Statements of their respective Accounts and the Form N–SAR annual reports filed by their respective Accounts.

15. Keyport, Keyport America and Liberty Life each will redeem for cash and securities all shares of SMAF, USGF and MIF they currently hold on behalf of the Accounts at the close of business on the effective date of the Substitution. The redemption of shares of SMAF, USGF and MIF will be effected partly for cash and partly for securities as a partial ''redemption-in-kind.'' SteinRoe Trust and Keyport Trust will effect the redemptions-in-kind in a manner that is consistent with the investment objectives and policies and diversification requirements applicable to each Substitute Fund. Keyport, Keyport America and Liberty Life each will review the securities selected by SteinRoe and Keyport Advisory for redemption-in-kind to assure that such securities are suitable investments for

each Substitute Fund. Prior to effecting the Substitution, SteinRoe Trust and Keyport Trust will take all actions necessary to comply with the requirements of Rule 18f-1 of the 1940 Act. The securities redeemed in kind will be used together with the cash proceeds to purchase the shares of each Substitute Fund. Applicants have determined that partially effecting the redemption of shares of SMAF, USGF and MIF in kind is appropriate based on the current similarity of the portfolio investments of SMAF, USGF and MIF to those of MAF, MSIF and SIF, respectively. The valuation of any in kind redemptions will be made on a basis consistent with the normal valuation procedures of SMAF, USGF, MIF and the Substitute funds. In all cases, Keyport, Keyport America and Liberty Life on behalf of their respective Accounts will simultaneously place the redemption requests with SMAF, USGF and MIF and the purchase orders with MAF, MSIF and SIF, respectively, so that the purchases will be for the exact amount of the redemption proceeds. As a result, at all times, monies attributable to Owners currently invested in SMAF, USGF and MIF will be fully invested.

16. The full net asset value of the redeemed shares held by the Accounts will be reflected in the Owners' accumulation unit values following the Substitution. Keyport, Keyport America and Liberty Life have undertaken to assume all transaction costs and expenses relating to the Substitution, including any direct or indirect costs of liquidating the assets of SMAF, USGF and MIF so that the full net asset value of redeemed shares of SMAF, USGF and MIF held by the Accounts will be reflected in the Owners' accumulation unit values following the Substitution.

17. SteinRoe and Keyport Advisory have been fully advised of the terms of the Substitution. Keyport, Keyport America and Liberty Life anticipate that SteinRoe and Keyport Advisory, to the extent appropriate, will conduct the trading of portfolio securities in a manner that provides for the anticipated redemptions of shares held by Keyport and the Accounts.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides, in pertinent part that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' The purpose of Section 26(b) is both to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with a substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants represent that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses it is designed to prevent. Applicants submit that the Substitution is an appropriate solution to the limited Owner interest and investment in SMAF, USGF and MIF and consistent with the alternative funding plans for the Contracts and Policies through the corresponding Substitute Funds. Applicants assert that the Substitution is being proposed in order to provide a consolidation of assets of Funds that currently are, and in the future are expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

3. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons: (a) The Substitution is of shares of the Substitute Funds whose objectives, policies and restrictions are sufficiently similar to the objectives of the Funds to be eliminated so as to continue fulfilling the Owner's objectives and risk expectations; (b) if an Owner so requests, during the Free Transfer Period, assets will be reallocated for investment in an Owner-selected Fund or Portfolio. Applicants represent that the Free Transfer Period is sufficient time for Owners to reconsider the Substitution; (c) the Substitution, in all cases, will be at the net asset value of the respective shares, without the imposition of any transfer or similar charge; (d) Keyport, Keyport America and Liberty Life have undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commissions, relating to the Substitution and are effecting the redemption of shares of USGF and MIF in a manner that attributes all transaction costs to Keyport. The partial redemptions-in-kind contemplated for appropriate securities of SMAF, USGF and MIF are expected to contribute to the reduction of such costs; (e) the Substitution will not be counted as a transfer under any contractual provisions of the Contracts or Policies that limit allowable transfers; (f) the Substitution in no way will alter the insurance benefits to Owners or the contractual obligations of Keyport, Keyport America and Liberty Life; (g) the Substitution in no way will alter the tax benefits to Owners; (h) Owners may choose simply to withdraw amounts credited to them following the Substitution, under the conditions that currently exist, subject to any applicable declining sales load; and (i) the Substitution is expected to confer certain modest economic benefits to Owners by virtue of the enhanced asset size of the Substitute Funds. Applicants consent to be bound by the terms and conditions listed immediately above in this paragraph.

4. Applicants represent that, on the basis of the facts and circumstances described both in the application and below, they have determined that it is in the best interests of Owners to substitute shares of MAF, MSIF and SIF for shares of SMAF, USGF and MIF, respectively. Each of the Funds is an existing portfolio of either SteinRoe Trust or Keyport Trust. SteinRoe, the adviser of SteinRoe Trust, and Keyport Advisory, the adviser of Keyport Trust, are both indirect subsidiaries of Liberty Mutual. The Independent Accounts and distributor are the same for each of the Funds. Applicants have determined that: (i) The investment objective and related investments of MAF are significantly similar to those of SMAF; (ii) the investment objective and related investments of MSIF are significantly similar to those of USGF; and (iii) the investment objectives and related investments of SIF are significantly similar to those of MIF. Applicants represent that both SMAF and MAF are portfolios that use asset allocation across the asset categories of stocks, bonds and money market securities to seek to achieve high total returns. Applicants further represent that both USGF and MSIF are income-oriented portfolios that primarily use debt securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities to seek to achieve a high level of current income. Finally,

they represent that MIF and SIF are income-oriented portfolios that seek to achieve high current income, although SIF is a portfolio that uses more foreign sovereign debt obligations and more higher-yielding, lower-quality corporate debt securities to achieve its objectives than MIF is permitted to use. Applicants submit that, although MIF is a somewhat more conservatively managed portfolio whose use of foreign debt securities and high-yielding corporate bonds is permitted but more limited than in SIF, the average maturity and duration of both MIF's and SIF's portfolio securities are very similar.

5. In reviewing the Funds to form an opinion as to which Fund or Portfolio was an appropriate alternative to SMAF, USGF and MIF, Applicants submit that they were faced with a different economic environment than when SMAF, USGF and MIF were first established. Therefore, Applicants concluded that the selection of a Fund or Portfolio that shared the overall investment objective(s) of the Funds to be eliminated and that involved a comparable investment strategy or risk exposure would best serve the interests of Owners. Applicants state that they considered the fact that the investment performance of each Substitute Fund in which Owners will be indirectly invested following the Substitution is similar or superior to the investment performance of the substituted fund or Portfolio.

6. Applicants represent that SteinRoe Trust's adviser and administrator, SteinRoe, and Keyport Trust's adviser, Keyport Advisory, have agreed to reimburse each of the Funds for their operating expenses in excess of certain specified percentages until April 30, 1995. For the year ended December 31, 1994, for example, SteinRoe reimbursed SMAF and MIF for their operating expenses $17,691 and $38,790, respectively. USGF received no reimbursement for its operating expenses during that period. Applicants further represent that, after April 30, 1995, SteinRoe has determined to continue, if necessary, to voluntarily reimburse MAF and MSIF for their operating expenses in excess of .75% and .70%, respectively, of each such Fund's average daily net assets until April 30, 1996. In addition, Applicants represent that, after April 30, 1995, Keyport Advisory and its affiliates have voluntarily agreed to increase the reimbursement to SIF for its operating expenses so that all operating expenses in excess of .80% of its average daily net assets will be reimbursed until April 30, 1996. Applicants believe, that, starting with the one-year period beginning on May 1, 1995, the anticipated expenses for each of the Funds to be eliminated are expected to be higher than or approximately the same as the anticipated or actual expenses of each of the corresponding Substitute Funds. Thus, on an annual basis, give or take one or two basis points, Owners will not be exposed to higher expenses, following the substitution and may, in fact, benefit from the lower expense ratios that should result from the consolidation of assets following the substitution. With respect to SMAF and USGF, Applicants state that the substitution will result in the consolidation of the assets of those Funds with substantially larger and more stable Funds. With respect to MIF, Applicants represent that the substitution will result in the assets in SIF (which commenced operation on July 14, 1994) increasing to over $55.7 million. Applicants believe that these consolidations of assets should promote greater economies of scale that may help to lower each Fund's expense ratio and, thereby, increase each Fund's performance.

7. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company. As explained above, immediately following the substitution, Keyport, Keyport America and Liberty Life, as appropriate, will combine: (i) the Sub-account invested in SMAF with the continuing Sub-account invested in MAF; (ii) the Sub-account invested in USGF with the continuing Sub-account invested in MSIF; and (iii) the Sub-account invested in MIF with the continuing Sub-account invested in SIF. Sub-accounts of a registered separate account are to be treated as separate investment companies in connection with substitution transactions. Therefore, Keyport, Keyport America and Liberty Life could be said to be transferring unit values between their Sub-accounts, and that the transfer of unit values could be said to involve purchases and sale transactions between Sub-accounts that are affiliated persons. For example, the Sub-account investing in SMAF could be said to be selling shares of such Fund to a Sub-account investing in MAF in return for units of such Sub-account. Conversely, it could be said that a Sub-account investing in MAF was purchasing shares of SMAF. The sale and purchase transactions between Sub-accounts could be said to come within the scope of Sections 17(a)(1) and 17(a)(2) of the 1940 Act, respectively.Therefore, the substitution may require an exemption from section 17(a) of the 1940 Act, pursuant to section 17(b) of the 1940 Act.

8. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a), upon application, if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned; (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicants represent that the terms of the proposed transactions, as described in the application, are reasonable and fair, including the consideration to be paid and received; do not involve over-reaching; are consistent with the policies of the Funds of SteinRoe Trust and Keyport Trust; and are consistent with the general purposes of the 1940 Act.

9. Applicants represent that, for all the reasons stated above, with regard to Section 26(b) of the 1940 Act, the Substitution is reasonable and fair. Applicants expect that existing and future Owners will benefit from the consolidation of assets in the corresponding Substitute Funds. Applicants state that the transactions effecting the Substitution, including the redemption of the shares of SMAF, USGF and MIF and the purchase of shares of MAF, MSIF and SIF, respectively, will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, as described above. Moreover, Applicants state that the partial redemptions-in-kind of shares of the Funds will be effected in conformity with Rule 18f-1 and Rule 17a–7 under the 1940 Act and the procedures of SteinRoe Trust and Keyport Trust established pursuant to Rule 17a–7. Applicants submit that owner interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, Applicants assert that the consideration to be received and paid is, therefore,

reasonable and fair. Keyport, Keyport America and Liberty Life each believe, based on their review of existing federal income tax laws and regulations and advice of counsel, that the Substitution will not give rise to any taxable income for Owners.

Applicants' Conclusions

Applicants submit, for all of the reasons stated herein, that their requests meet the standards set out in Sections 17(b) and 26(b) of the 1940 Act and that an order should, therefore, be granted. Accordingly, Applicants request an order pursuant to Sections 17(b) and 26(b) of the 1940 Act approving the substitution of shares of MAF for shares of SMAF, the substitution of shares of MSIF for shares of USGS, and the substitution of shares of SIF for shares of MIF, respectively.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22196 Filed 9–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21331/812–9662]

Van Kampen Merritt Equity Trust et al.; Notice of Application

August 31, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Van Kampen Merritt Equity Trust (the ''VK Trust''), American Capital Utilities Income Fund, Inc. (the ''AC Fund''), Van Kampen American Capital Investment Advisory Corp. (the ''VK Adviser''), Van Kampen American Capital Asset Management, Inc. (the ''AC Adviser''), and Van Kampen American Capital Distributors, Inc. (the ''Distributor'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit the VK Fund, a sub-trust of the VK Trust, to acquire all of the assets of the AC Fund. Because of certain affiliations, the two funds may not rely on rule 17a–8 under the Act.

FILING DATE: The application was filed on July 12, 1995. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Van Kampen Merritt Utility Fund (the ''VK Fund'') is a sub-trust of the VK Trust, an open-end management investment company organized as a Massachusetts business trust. The AC Fund is an open-end management investment company organized as a Maryland corporation (the VK Fund and the AC Fund are collectively referred to as the ''Funds''). The VK Adviser advises the VK Fund, and the AC Adviser advises the AC Fund. As of May 31, 1995, the AC Adviser owned 9.25% of the outstanding voting shares of the AC Fund.

2. On December 20, 1994, The Van Kampen Merritt Companies, Inc. acquired from The Travelers Inc. all of the outstanding capital stock of American Capital Management & Research, Inc., which at that time was the parent company of the AC Adviser. Immediately following this acquisition, American Capital Management & Research, Inc. was merged into The Van Kampen Merritt Companies, Inc. and the combined entity was renamed Van Kampen American Capital, Inc. The VK Adviser, the AC Adviser, and the Distributor are wholly-owned subsidiaries of Van Kampen American Capital, Inc., and are organized as Delaware corporations.

3. Van Kampen American Capital, Inc. is a wholly-owned subsidiary of VK/AC Holding, Inc. VK/AC Holding, Inc., in turn, is controlled by The Clayton & Dubilier Private Equity Fund IV Limited Partnership (''C&D L.P.''), which owned, as of August 29, 1995, approximately 86 percent of the common stock of VK/AC Holding, Inc. C&D L.P. is managed by Clayton, Dubilier & Rice, Inc., a New York-based private investment firm. The general partner of C&D L.P. is Clayton & Dubilier Associates IV Limited Partnership.

4. The investment objectives of the Funds are essentially the same. The investment objective of the VK Fund is to provide its shareholders with capital appreciation and current income. The VK Fund seeks to achieve its objective by investing in a diversified portfolio of common stocks and income securities issued by companies engaged in the utilities industry. Under normal market conditions, at least 80% of the VK fund's assets are invested in securities issued by companies engaged in the utilities industry. As of May 31, 1995, the net assets of the VK Fund were $134,753,821.

5. The primary investment objective of the AC Fund is to provide its shareholders with current income. Capital appreciation is a secondary objective which is sought only when consistent with the primary objective. The AC Fund seeks to achieve its investment objective by investing in a diversified portfolio of common stocks and income securities issued by companies engaged in the utilities industry. Under normal market conditions, at least 65% of the AC Fund's assets are invested in securities issued by companies engaged in the utilities industry. As of May 31, 1995, the net assets of the AC Fund were $26,996,393.

6. Each fund offers three classes of shares. Class A shares of the Funds generally are sold with a front-end sales charge. Purchases of Class A shares in excess of $1,000,000 are not subject to a front-end sales charge but are subject to a contingent deferred sales charge (''CDSC'') of 1.00% if redeemed within one year from the date of purchase. Class B shares of the Funds are sold without a front-end sales charge but are subject to a CDSC payable upon redemption. Class C shares of the Funds are sold without a front-end sales charge and are subject to a CDSC of 1.00% if redeemed within one year of purchase.

7. The VK Fund proposes to acquire all of the assets of the AC Fund, in exchange for shares of beneficial interest in the VK Fund and the assumption by the VK Fund of all of the liabilities of

the AC Fund. The number of shares of each class of the VK Fund to be issued to shareholders of the AC Fund will be determined on the basis of the Funds' relative net asset values for each class of shares, computed as of 5:00 p.m. Eastern time on the closing date. Class A, Class B, and Class C shareholders of the AC Fund will receive, respectively, Class A, Class B, and Class C shares of the VK Fund. After this distribution and the AC Fund's winding up of its affairs, the AC Fund will be terminated.

8. In anticipation of the proposed reorganization, on April 7, 1995, the board of trustees of the VK Trust (the ''VK Board'') unanimously approved a consolidation plan (the ''Consolidation Plan'') which provided for: (a) merging certain funds advised by the VK Adviser and the AC Adviser, including the Funds, in order to achieve certain economies of scale and efficiency; (b) permitting exchangeability of shares between funds advised by the VK Adviser and the AC Adviser; (c) selecting a common transfer agent; (d) consolidating the VK Board and the board of directors of the AC Fund (the ''AC Board'') into a combined board;[1] and (e) reorganizing most of the funds advised by the VK Adviser and the AC Adviser, including the Funds, as Delaware business trusts. On May 11, 1995, the AC Board unanimously approved the Consolidation Plan. Shareholder approval of the actions proposed in the Consolidation Plan was obtained, or will be obtained, where necessary.

9. In anticipation of the proposed reorganization, the VK Board and the AC Board, including the non-interested trustees/directors, unanimously approved an agreement and plan of reorganization (the ''Reorganization Agreement''). Applicants intend that the Reorganization Agreement will be submitted to the shareholders of the AC Fund for approval at a meeting to be held on or about September 15, 1995. A registration statement on Form N–14 containing a combined proxy statement/prospectus was filed with the Commission on May 25, 1995. The AC Fund began mailing the proxy statement/prospectus to its shareholders on August 4, 1995. Assuming that the required shareholder vote is obtained at the AC Fund's shareholder meeting, the closing of the proposed reorganization is expected to be shortly thereafter, but not before applicants' receipt of the requested order.

10. In considering the Reorganization Agreement, the VK Board and the AC Board, including the non-interested trustees/directors of each board, considered a number of factors in concluding that the Funds' participation in the reorganization is in the best interests of each fund and that the interests of existing shareholders of the Funds will not be diluted. The factors considered by the boards included: (a) the capabilities and the resources of the VK Adviser and other service providers to the VK Fund; (b) the advisory fees and expenses of the Funds, the expense ratios of the Funds, and the anticipated expense ratio of the combined fund; (c) comparative investment performance of the VK Fund and the AC Fund; (d) the terms and conditions of the reorganization; (e) the potential benefits of the reorganization to affiliates of the Funds; (f) the similarity of the Funds; (g) the costs of the reorganization to the Funds; and (h) the fact that the reorganization will be effected on a tax-free basis. The VK Fund, as the surviving fund after the reorganization and merger of the VK Fund and the AC Fund, will be responsible for the expenses incurred by the AC Fund and the VK Fund in connection with the reorganization, and the VK Adviser, the AC Adviser, and the Distributor will be responsible for their respective expenses incurred in connection with the reorganization.

11. The consummation of the reorganization is subject to a number of conditions set forth in the Reorganization Agreement, including: (a) The shareholders of the AC Fund shall have approved the Reorganization Agreement; and (b) the parties shall have received all necessary approvals, registrations, and exemptions (including the requested order) under federal and state securities laws with respect to the proposed reorganization. Any provision of the Reorganization Agreement may be waived, amended, modified, or supplemented by the mutual written agreement of the parties; provided, however, that the parties will not make any material changes to the Reorganization Agreement that affect the application without the prior approval of the SEC. Applicants also agree not to waive, amend, or modify any provision of the Reorganization Agreement that is required by state or Federal law to effect the reorganization.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all the assets of registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers provided that certain conditions are satisfied. The proposed reorganization may not be exempt from the prohibitions of section 17(a) by reason of rule 17a–8 because the AC Adviser owns more than 5% of the outstanding voting securities of the AC Fund.

3. Applicants believe that the terms of the proposed reorganization satisfy the standards of section 17(b). The AC Board and the VK Board, respectively, including their disinterested trustees and directors, have reviewed the terms of the proposed reorganization, including the consideration to be paid or received, and have found that participation in the proposed reorganization as contemplated by the Reorganization Agreement is in the best interests of the VK Fund and the AC Fund, and that the interests of existing shareholders of the Funds will not be diluted as a result of the reorganization. In addition, the AC Board and the VK Board found that the proposed reorganization is consistent with the Funds' policies and the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22195 Filed 9–6–95; 8:45 am]

BILLING CODE 8010–01–M

[1] The AC Fund will comply with section 15(f) of the Act with respect to the composition of the AC Board. Section 15(f) provides, in relevant part, that an investment adviser of a registered investment company may receive a benefit in connection with a sale of an interest in such investment company which results in an assignment of the investment company's advisory contract if, for a three-year period following the sale, 75% of the directors of the investment company are not interested persons of the adviser or its predecessor.

DEPARTMENT OF STATE

[Public Notice No. 2252]

Notice of Advisory Committee Study Group Meeting on Proposed Rules for Secured Interests in International Transactions

A meeting of a new Study Group on International Secured Interests, co-hosted by the Secretary of State's Advisory Committee on Private International Law (ACPIL) and the Subcommittee on International Commercial Law, Section of Business Law of the American Bar Association (ABA), will be held on Monday, September 18, 1995 in New York at the Brooklyn Law School from 9:30–5:00. The focus of the meeting will be on various efforts by international organizations and others to establish rules for, or unify laws on, secured interests and receivables financing in the context of international transactions. A seminar on international and domestic credit enhancement will take place the following day at Brooklyn Law School, and attendees at the Study Group meeting will be invited to the following day's sessions.

The primary focus for the Study Group will be projects under way at UNCITRAL (United Nations Commission on International Trade Law) and UNIDROIT (International Institute for the Unification of Private Law).

UNIDROIT, an intergovernmental organization of which the United States is a member, is in the process of preparing an initial draft of Uniform Rules on the recognition and enforcement of international interests in mobile equipment. The proposed Rules will need to define what constitutes an international security interest, whether the convention itself should create or only recognize such interests, whether such interests may secure future as well as present obligations, the scope of equipment to be covered, the appropriate registry or registries, remedies and enforcement, basic priority rules and possibly jurisdiction. Consideration will also be given to drafting the rules in the form of a convention (multilateral treaty), rather than as a uniform law. UNIDROIT will hold its next drafting session in October 1995; the meeting of the Study Group will provide guidance for U.S. participants. Documents available include UNIDROIT reports contained in Study LXXII, reports of U.S. participants in prior preliminary drafting meetings of UNIDROIT, and reports prepared for the Aviation Working Group.

UNCITRAL is in the preliminary stages of drafting model law rules on ''receivables financing'', which focuses on the assignment of rights to payment for goods and services in a broad range of commercial goods. Various types of trade financing mechanisms may be relevant, such as secured transactions, factoring, forfeiting, secondary financing, etc. The preliminary draft rules cover forms of assignment and transfer of security rights, the relationship between assignor and assignee, warranties, applicable law, enforcement and defenses, effect of assignments toward third parties, and priorities. The rules are intended to encompass bulk assignments and general inventory, as well as identifiable goods. UNCITRAL will hold its first working group meeting on this topic in November, 1995; the meeting of the Study Group will provide guidance for U.S. participants. Documents available include reports prepared by the UNCITRAL Secretariat on the legal aspects of receivables financing, U.N. Docs. A/CN.9/397 and 412.

Discussion of the above-referenced projects will take into account the already completed UNIDROIT conventions on International Financial Leasing and International Factoring, both of which are expected to be submitted to the U.S. Senate for advice and consent to United States ratification.

The review of these and other international projects will take into account proposed revisions to the Uniform Commercial Code which are presently under consideration by the National Conference of Commissioners on Uniform State Laws, as well as work being done by the American Law Institute, the American Bar Association and others. In addition, the status of other related projects will be discussed, including current projects on secured interests laws by the World Bank and the National Law Center for Inter-American Free Trade (CIFT) in Tucson, Arizona.

The meeting will be open to the public up to the capacity of the meeting room and all attendees can participate subject to rulings of the Chair. The meeting will be held at Brooklyn Law School, 250 Joralemon Street (downtown Brooklyn), New York 11201. Location of the meeting will be posted at the Law School for participants. Persons wishing to attend or who want further information should contact Peter Winship, International Commercial Law Subcommittee, at (202) 822–8633, fax (202) 785–5185, or Harold Burman, Advisory Committee Executive Director, (202) 776–8421, fax (202) 776–8482.

Copies of all documents referred to above can be obtained on request from the Advisory Committee. Persons unable to attend the meeting may submit their comments in writing to the Advisory Committee by fax at (202) 776–8482 or to the Office of the Legal Adviser (L/PIL), Suite 203 South Building, 2430 E Street, NW., Washington, DC 20037–2800. For information on arrangements at Brooklyn Law School, contact Judy Cohn at (718) 780–7987, fax (718) 780–0393.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law, Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 95–22236 Filed 9–6–95; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–95–32]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 27, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 1, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 28030
Petitioner: Taquan Air Service, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To permit appropriately trained pilots employed by Taquan Air Service, Inc., (TAS) to perform daily compressor turbine washes on the Pratt & Whitney engine installed on the Cessna 208 Caravan I that TAS operates under part 135.

Dispositions of Petitions

Docket No.: 18599
Petitioner: T.B.M., Inc.
Sections of the FAR Affected: 14 CFR 36.1581(c)
Description of Relief Sought/ Disposition: To amend Exemption No. 2745, as amended, which permits the amendment of the landing weight operating limitations imposed on specified DC–6 and DC–7 aircraft to allow landings at weights at or below the applicable maximum landing weight during firefighting operations. The amendment deletes a DC–7B (Registration No. N848D) from this exemption, because it was destroyed in an accident.
GRANT, July 24, 1995, Exemption No. 2745B

Docket No.: 25089
Petitioner: Hawkins & Powers Aviation, Inc.
Sections of the FAR Affected: 14 CFR 137.53(c)(2)
Description of Relief Sought/ Disposition: To extend Exemption No. 5075, as amended, which permits Hawkins & Powers Aviation, Inc., to conduct aerial application of insecticide from C–118A (DC–6) aircraft over congested areas without the aircraft being equipped with a device capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds.
GRANT, August 3, 1995, Exemption No. 5075C

Docket No.: 25794
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 47.49 and 91.203
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5318, as amended, which permits Air Transport of America member airlines to operate their U.S.-registered aircraft on a temporary basis following the incidental loss or mutilation of a certificate of airworthiness, registration, or both. The amendment removes references to § 47.49. The original grant reflected that this section was not necessary to the issuance of the exemption; however, § 47.49 was nevertheless inadvertently included.
GRANT, July 24, 1995, Exemption No. 5318D

Docket No.: 27117
Petitioner: Paragators, Inc.
Sections of the FAR Affected: 14 CFR 105.43
Description of Relief Sought/ Disposition: To extend Exemption No. 5659, which permits Paragators, Inc., (Paragators) to allow nonstudent parachutists who are foreign nationals to participate in Paragators-sponsored parachute-jumping events at Paragators' facilities, using parachutes that have not been approved by the FAA, but have been accepted or approved for use by the proper authorities in the foreign parachutist's own country.
GRANT, June 30, 1995, Exemption No. 5659A

Docket No.: 27140
Petitioner: Hi Line Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To extend Exemption No. 5715, which allows Hi Line Helicopters, Inc., to operate part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft.
GRANT, July 19, 1995, Exemption No. 5715A

Docket No.: 27153
Petitioner: Kachina Aviation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To extend Exemption No. 5701, which allows Kachina Aviation to operate its part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft.
GRANT, May 24, 1995, Exemption No. 5701A

Docket No.: 27167
Petitioner: Corporate Aviation Services, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To extend Exemption No. 5756, which allows Corporate Aviation Services, Inc., to operate part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft.
GRANT, July 19, 1995, Exemption No. 5756A

Docket No.: 27306
Petitioner: NockAir Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 133.43 (a) and (b)
Description of Relief Sought/ Disposition: To extend Exemption No. 5708, which permits NockAir Helicopters, Inc., to use its helicopters to perform aerial trapeze acts without using an approved external-load attachment or a quick-release device for carrying a person on a trapeze bar.
GRANT, August 3, 1995, Exemption No. 5708A

Docket No.: 27310
Petitioner: Purdue University
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d) (2) and (3); 61.65 (c), (e) (2) and (3), and (g); 61.67(d)(2); 61.157 (d)(1) and (2) and (e) (1) and (2); 61.191(c); and appendix A, part 61
Description of Relief Sought/ Disposition: To extend Exemption No. 5706, which permits Purdue University to use FAA-approved simulators to meet certain flight experience requirements of part 61.
GRANT, July 19, 1995, Exemption No. 5706A

Docket No.: 28068
Petitioner: Bombardier, Inc., Canadair
Sections of the FAR Affected: 14 CFR 91.211(b)(1)(ii)
Description of Relief Sought/ Disposition: To allow operation of Canadair Global Express (GX) aircraft at altitudes above 41,000 feet mean sea level (MSL) without requiring that at least one pilot at the controls of the airplane wear an oxygen mask.
DENIAL, August 3, 1995, Exemption No. 6141

Docket No.: 28079
Petitioner: General Electric Aircraft Engines

Sections of the FAR Affected: 14 CFR 21.325(b) (1) and (3)
Description of Relief Sought/ Disposition: To allow export airworthiness approvals to be issued for Class I products that have been assembled, inspected, and tested at the Universal Maintenance Center (UMC) in Bandung, Indonesia. Additionally, this exemption allows export airworthiness approvals to be issued for Class II and Class III export that are U.S.-manufactured under the control of General Electric Aircraft Engines quality control system but exported from its facilities located in other countries.
PARTIAL GRANT, July 25, 1995, Exemption No. 6139

Docket No.: 28219
Petitioner: IRZ Infrascan
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit IRZ Infrascan to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
GRANT, July 14, 1995, Exemption No. 6138

Docket No.: 28282
Petitioner: Raytheon Aircraft Company
Sections of the FAR Affected: 14 CFR 21.183(c) and 21.325(b)(1)
Description of Relief Sought/ Disposition: To permit the Raytheon Aircraft Company to obtain standard airworthiness certificates for its Hawker Models 800, 800XP, and 1000 aircraft, type certificated in accordance with § 21.21 instead of § 21.29, and to permit Raytheon to obtain export certificates of airworthiness for those model aircraft from a manufacturing facility located outside of the United States.
GRANT, August 3, 1995, Exemption No. 6142

[FR Doc. 95–22201 Filed 9–6–95; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 95–20]

Advanced Technology in Commercial Motor Vehicle Operations; Request for Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for information.

SUMMARY: The FHWA seeks information from motor carriers, vehicle and component manufacturers, technology vendors, and the public on the use of advanced driver, vehicle, and inspection technology in commercial motor vehicle operations. The FHWA plans to evaluate existing technologies to determine if they could be used to simplify or automate compliance with any of the Federal Motor Carrier Safety Regulations (FMCSRs) without compromising public safety. Commenters are encouraged to identify safety-related technology that could reduce paperwork or contribute to more efficient safety management and enforcement practices.

DATES: Comments should be received no later than November 6, 1995.

ADDRESSES: All written, signed comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, Room 4232, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip J. Roke, Office of Motor Carrier Research and Standards, (202) 366–5884, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA requests ideas, suggestions, and comments from motor carriers, manufacturers, technology vendors, other interested parties, and the public on how technology currently available, or soon to become available, to motor carriers and drivers subject to Federal regulatory requirements could be substituted for existing regulatory methods without compromising public safety. This is consistent with the goals of the agency's Zero Base Regulatory Review of the FMCSRs (49 CFR parts 350–399).

Specifically, the FHWA requests commenters to identify and discuss technologies that could reduce costs, delays, and paperwork burdens associated with the current rules, or even enhance operational safety. For example, on September 30, 1988, the FHWA published a final rule (53 FR 38666) to allow motor carriers, at their option, to use certain automatic on-board recording devices to record their drivers' records of duty status in lieu of the required handwritten record of duty status. This provision is now found at § 395.15 of the FMCSRs. Comparable innovations with even greater economic or safety potential may now be available or in the final stages of development.

Information submitted by commenters will help the agency decide which rules could benefit from technological modernization. We will consider amending or replacing current rules with technology-based standards that are consistent with the safe operation of commercial motor vehicles. Any revisions or modifications to the FMCSRs would be done under a separate rulemaking.

Ongoing Research and Development

The FHWA is pursuing several research projects addressing advances in driver, vehicle, and inspection technology. These projects include studies of fitness-for-duty testing devices, automated roadside inspection technologies, advanced brake system testing devices, and the feasibility of standardized vehicle safety component diagnostic devices. The FHWA will use relevant information supplied in response to this notice to supplement and/or validate these research findings.

Manufacturing Standards

The National Highway Traffic Safety Administration (NHTSA) establishes vehicle manufacturing standards and has the statutory authority to require specific components and or systems in original manufactured vehicles. The FHWA plans to share relevant vehicle component and/or systems information received in response to this notice with the NHTSA.

Information Requested

The FHWA requests commenters to provide information on available or soon-to-be available driver and vehicle technology that reduces the regulatory burden of complying with specific areas of the FMCSRs. Please provide as much data as possible on the design, operation, and cost (hardware, software, installation, training, maintenance, etc.) of each device or technology. Reductions in regulatory burdens should be quantified if at all possible. Detailed estimates of savings (in expenditures, time, accidents avoided, etc.) are also very important. (49 U.S.C. 31136, 315022; 49 CFR 1.48)

Issued on: August 30, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–22097 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection Submitted to OMB for Review

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

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) a Paperwork Reduction Act Submission regarding an information collection titled Recordkeeping Requirements for Securities Transactions (12 CFR Part 12).

DATES: Comments on this information collection are welcome and should be submitted by September 28, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the OCC contact.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the OCC has sent to OMB a Paperwork Reduction Act Submission regarding the following information collection:

Type of Review: Regular.

Title: Recordkeeping Requirements for Securities Transactions (12 CFR 12).

Description: The Recordkeeping Requirements for Securities Transactions (12 CFR 12) serve to establish an audit trail that is used by the OCC in its regulatory examinations as a tool to evaluate a bank's compliance with the anti-fraud provisions of the Federal securities laws. The records provide a basis for adequate disclosure to customers who effect securities transactions through national banks.

Form Number: None.

OMB Number: 1557–0142.

Respondents: Businesses or other for-profit.

Number of Respondents: 416.

Total Annual Responses: 416.

Average Hours Per Recordkeeper: 306 hours.

Total Annual Burden Hours: 127,296.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0186, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0186), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Comments: Comments regarding the submission should be addressed to both the OMB reviewer and the OCC contact listed above.

Date: August 30, 1995.

James F.E. Gillespie,

Director, Legislative & Regulatory Activities.

[FR Doc. 95–22125 Filed 9–6–95; 8:45 am]

BILLING CODE 4810–33–P

UNITED STATES INFORMATION AGENCY

Program Title NIS Secondary School Initiative; Inbound Academic Year Placement

ACTION: Notice—Request for Proposals.

SUMMARY: The NIS Secondary School Initiative Division, Office of Citizen Exchanges, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to place high school students between the ages of 15 and 17 from the New Independent States (NIS) of the former Soviet Union in homestays and schools for the 1996/97 academic year. Organizations will be responsible for orienting students at the local level and for monitoring them during their time in the U.S.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The number of grant awards in this competition will likely be 15–20. All grants are subject to the availability of funds in Fiscal Year 1996.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–96–12. This is a request for proposals only for the activities described above. Requests for proposals in support of other youth exchange programs with the NIS are being published separately.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, DC time on Friday, October 19, 1995. Faxed documents will not be accepted, nor will documents postmarked October 19 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Notification of awards will be announced after January 8, 1996. Grant funds should be available by April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Division for the Secondary School Initiative, E/PY, Room 314, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: 202/619–6299; fax: 202/619–5311; Internet: daronson@usia.gov, to request a Solicitation Package, which includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Specialist Diana Aronson on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Division for the NIS Secondary School Initiative or submitting their proposals. Once the RFP deadline has passed, Agency representatives may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and ten copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/P–96–12, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political

character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle. Organizations are encouraged to seek diverse communities and host families in which to place students. Orientation programming should include information on diversity issues as part of American culture and should touch on current laws that mandate equal treatment of all people regardless of race, gender, national origin, or disabling condition.

Overview

Academic year 1996–97 will be the fourth year of the program, which is part of the NIS Secondary School Initiative. It was originally funded under the FREEDOM Support Act of 1992, and in fiscal year 1996 will be funded out of the USIA appropriation for educational and cultural exchanges. The goals of the program are to: promote mutual understanding between the people of the NIS and the U.S.; instill in the participants democratic values and provide experience living in a democracy; establish a critical mass of young people in the NIS capable of transforming their societies.

Purpose

To place approximately 1,200 pre-selected high school students from the 12 New Independent States (NIS) of the former Soviet Union in the United States to study and live for one academic year. To place students in qualified, well-motivated host families and welcoming schools. To enable the students to attain a broad view of the society and culture of the U.S. and to share their cultures with Americans.

Guidelines

Three organizations have been awarded grants to perform the following functions: recruitment and selection of students; assistance in documentation and preparation of IAP 66 forms; preparation of cross-cultural materials; pre-departure and arrival orientation; international travel from home to the host community and return; ongoing communication with natural parents; tracking of all students during their stay in the U.S. and provision of data to USIA; and ongoing follow-up with alumni following their return to the NIS. Separate grants will be awarded for a one-week mid-year Washington DC civics education program for all students and for intensive English training for those students who need to improve their English before going to their host communities. The announcements of the competitions for these grants are being published separately.

Organizations chosen under this competition are responsible for the following: Recruitment, selection, and orientation of host families; school placement; local orientation; specialized training of local staff and volunteers to work with NIS students; preparation and dissemination of materials to students pertaining to the placement organization; program enhancement activities; supervision and monitoring of students, trouble-shooting, and periodic reporting on their progress; communication with the organizations conducting other program components, when appropriate; evaluation of the students' performance and the success of the organization in achieving program goals; and re-entry training to prepare students for readjustment to their native culture.

Applicants may request a grant for the placement of at least 20 students. There is no ceiling on the number of students who may be placed by one organization. It is anticipated that 15 to 20 grants will be awarded for this component of the program. Placements will be spread all across the U.S. Students may be clustered in one or more regions or dispersed. If dispersed, applicants should demonstrate that local staffing and training of local staff is adequate to ensure their competence in supervising and counseling students from the NIS. Please refer to the Guidelines for Proposals—available on request from the address listed above—for details on essential program elements and permissible costs.

Programming begins at the point that the complete applications on selected finalists are delivered to the placement organizations, approximately on April 1, 1996. Participants arrive in their host communities in the month of August and remain for 10 to 11 months until their departure during the period mid-June to early July 1997.

Eligibility

Private legally incorporated not-for-profit—IRS-designated 501(c)(3)—organizations and public institutions are eligible for consideration under this competition. Organizations with less than four years experience conducting youth exchange programs will be eligible for grants not to exceed $60,000.

Participants

Finalists are secondary school students aged 15–17 who have been tested, interviewed and thoroughly screened in an elaborate, merit-based process. Some may be completing their studies in their home schools in May of 1996. Applicants are referred to the Guidelines for Proposals for additional details on student selection criteria.

Visa/Insurance/Tax Requirements

Participants will travel on J–1 visas issued by USIA using a government program number. Organizations must comply with all pertinent J–1 visa regulations in carrying out their responsibilities. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget. Applicants should submit the health and accident insurance plans they intend to use for students on this program. USIA will compare the plan with the Agency plan and make a determination of which will be applicable.

Materials

Drafts of all printed materials developed specifically for this program paid for with grant funds should be submitted to the Agency for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source. The USIA will determine the disposition of the copyrights on any materials so funded.

Proposed Budget

Organizations must submit a comprehensive line item budget based on guidelines in the Solicitation Package. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. Please refer to the Solicitation Package for complete formatting instructions and for allowable costs. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Review Process

The USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein

and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as USIA's East European and NIS Area Office and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to USIA's mission to promote mutual understanding.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants and host families, program venue, and program evaluation) and program content (orientation and wrap-on sessions, programs meetings, resource materials and follow-up activities).

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to carry out the responsibilities listed above.

6. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful administration of exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project Evaluation: Proposals should include a plan to evaluate both the performance of the students and the grantee organization's success in achieving the goals of the program as outlined above. USIA recommends that the proposal include a draft survey questionnaire or other evaluation technique plus description of a methodology to use. Award-receiving organizations/institutions will be expected to submit quarterly reports.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process after January 8. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 1, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–22192 Filed 9–6–95; 8:45 am]

BILLING CODE 8230–01–M

Freedom Support Act Secondary School Initiative—U.S./NIS Academic Studies Inbound/Outbound Program

ACTION: Notice—request for proposals.

SUMMARY: The Division for the Secondary School Initiative, Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award to facilitate academic exchanges between American high school students and students from the 12 New Independent States (NIS) of the former Soviet Union. Public and private non-profit organizations and educational institutions meeting the provisions described in IRS regulation 25 CFR 1.501(c)(3)–1 may apply to develop projects that promote the purposes of this program, which are to: (a) Build the capacity of organizations to conduct academic exchanges at the secondary school level between the U.S. and the NIS; (b) sponsor study opportunities in the U.S. for NIS high-school-aged students; and (c) promote study abroad opportunities in the NIS for Americans. Applicants may apply for grants of up to two years duration. Exchanges of three to six months duration may take place during the 1997 spring semester, the 1997 fall semester, the 1998 spring semester, and the 1998 fall semester. Full year inbound and outbound exchanges may take place during the 1997–98 academic year.

The countries of the NIS are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Overall grant making authority for this program is contained in the Secondary School Exchange Initiative, as originally authorized in the Freedom Support Act of 1992 (P.L. 102–391). It is anticipated that $4 million will be allotted to this program.

Programs and projects must conform with Agency requirements and guidelines as outlined in the Solicitation Package. USIA projects are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–96–15. This is a request for proposals only for the program models described above. Requests for proposals in support of other youth exchange programs with the NIS are being published separately.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, January 12, 1996. Faxed documents will not be accepted, nor will documents postmarked on January 12, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Notification of awards will be announced on or after April 12, 1996. Grant funds should be available by June 1, 1996.

FOR FURTHER INFORMATION CONTACT:

The Division for the Secondary School Initiative, E/PY, Room 320, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–6299; fax (202) 619–5311, internet address: sjones@usia.gov to request a Solicitation Package, which includes more detailed criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer, Shalita Jones on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries or submitting their proposals to the Division of the Secondary School Initiative. Once the RFP deadline has passed, Division representatives may not discuss this competition in any way with applicants until the Bureau's proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/P–96–15, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative,'' sections of the proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representatives of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to ethnicty, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program and administration of its program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

The purpose of this program is to provide the opportunity for American students to study at a school and experience life with a host family and its community in one of the 12 New Independent States of the former Soviet Union, and, to sponsor students from the NIS to study at an American school and experience life with a host family and its community in the U.S. The programs are intended to provide avenues that will enhance the students' understanding of each country's political, social, and cultural and ethnic diversity; to promote the exchange of ideas; and to foster long-term friendships, through courses of study such as history, social studies, civics, and global economics and environmental issues, as well as through living and interacting with their host families and communities. Initial grant funding is also intended to facilitate the creation of partnerships with NIS organizations seeking to promote exchanges, and to assist U.S. non-profit organizations to build their own capacity to conduct exchange business in the NIS which will promote a long-term future for exchanges beyond federal funding.

This program has four components. Please note that each component is independent of the other and is not subject to reciprocity. Applicants may opt to apply for any or a combination of any or all four of the following components:

A. Outbound Semester

This component will give American high-school students a chance to live with a host family and study at the secondary school level in an NIS country for a period of no less than three months.

B. Inbound Semester

This component provides opportunities for NIS high-school students to live with a host family and study at secondary-level institutions for one academic semester in the U.S.

C. Academic Year Outbound

This component provides opportunities for American high-school students to study for a school year (no less than 9 months) in a country of the former Soviet Union, and to more fully experience the life and culture of a host family and its community.

D. Academic Year Inbound

This component provides the opportunity for students from the former Soviet Union to study for a school year (no less than 9 months) at an American high school, and to experience the life and culture of a host family and its community.

Guidelines

There is no prescribed formula for either component of the program, however, organizations should encourage students to participate in extracurricular activities and provide students with community-based activities. Also, organizations have the option to concentrate groups of students in regional clusters or disperse students wisely. The purpose of clustering is to facilitate periodic gatherings for ongoing orientation, excursions and cultural programming, and well as supervision and feedback. Organizations should identify in their proposals the target regions, states and/or communities in which placements will be sought, and describe how placements in those areas will benefit students and the overall purpose of the program. The names and addresses of prospective schools and letters of agreement to participate from relevant school/district/community officials should be included in the proposal. Regardless of the placement plan, organizations may propose periodic gatherings of students locally, regionally, or nationally.

Grantee organizations working with their offices overseas and/or NIS partners will: Recruit and select students based on merit using their own criteria; arrange for their placement in schools; select host families; make all travel and logistical arrangements; conduct orientation, re-entry, and debriefing sessions for students and hosts; supervise students, solve problems, and provide counseling as needed; develop a mechanism for the transfer of academic credit and/or the certification of school attendance; interact with the schools on an ongoing basis; and evaluate the program's success.

Proposals should succinctly describe how these elements will be handled, with special attention to the following factors:

A. Proposals must demonstrate the organization's capacity to secure quality homestays and school placements for the number of students on which they are bidding by describing the process it uses to identify and screen potential host families, as well as its system for making school placements.

B. Organizations using the cluster method should: specify the cluster size and likely locations; and include a description of how clustering will affect the program, such as scheduling

periodic gatherings of the students. A sample schedule of gatherings and topics or themes to be addressed should be included.

C. Organizations using the dispersal method should explain its placement philosophy; describe how dispersal will affect the program; and if planning periodic gatherings the proposal should include a tentative itinerary for sample meetings.

D. Inbound students should be sufficiently proficient in English upon arrival in the U.S. in order to function in a high-school environment. However, no USIA grant funding will be provided for English training under this program.

Preference will be given to proposals that include language skills as a selection criterion for American students going to the NIS. Applicant organizations with alternative approaches to language qualifications should discuss them in the proposal.

Programs must comply with J–1 visa regulations. Visa applications (IAP–66 forms) for NIS participants will be processed by the program office. Please refer to program specific guidelines in the POGI section of the Solicitation Package for further details.

Eligibility

Private not-for-profit organizations and public educational instructions including secondary schools, school districts, state education agencies, and organizational and educational consortiums are invited to participate. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Proposed Budget

Applicants must submit a comprehensive line-item budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Cost-sharing is encouraged and may be in the form of allowable direct or indirect costs. Please refer to the Solicitation Package and Guidelines for complete budget and formatting instructions, and allowable costs.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the Agency's Area Office and the relevant USIA post overseas. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposals should also clearly demonstrate how students will be selected on the basis of merit and the qualifications needed for a successful program.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or ongoing activities and efforts that further the principle of diversity within both the organization and the program activities.

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the success of the program, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly reports, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about

April 12, 1996. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 1, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–22193 Filed 9–6–95; 8:45 am]

BILLING CODE 8230–01–M

Meeting of the Cultural Property Advisory Committee

SUMMARY: The Cultural Property Advisory Committee will meet on September 13 and 14, 1995, in Santa Fe, New Mexico. The sessions on September 13 will be held in the Meem Auditorium, Museum of Indian Arts and Culture, 710 Camino Lego, Santa Fe, from approximately 9:30 a.m. to 5 p.m. The agenda will include discussions concerning public awareness, expanding institutional dialogue on the protection of cultural property, and developments in museum ethics. There will also be a presentation on an initiative about ''Protecting Cultural Objects Through International Documentation Standards.'' Technological developments in law enforcement will also be addressed. The September 13 portion of the meeting will be open to the public. Due to limited space, persons wishing to attend must call (202) 619–6612 no later than 4 p.m. (EDST), September 12, 1995. Only persons who have telephoned in advance will be permitted in the meeting room. The meeting on September 14 will be held in the Board Room of the School of American Research, 660 Garcia St. The entire meeting held on September 14 will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). The agenda will include the review of cultural property import restrictions currently in place under the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et. al., P.L. 97–446) and deliberations concerning internal Committee and agency operations.

Dated: August 31, 1995.

Penn Kemble,

Acting Director, United States Information Agency.

Determination To Close; The Entire Meeting of the Cultural Property Advisory Committee; September 14, 1995

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that the entire meeting of the Cultural Property Advisory Committee on September 14, 1995, which is devoted (1) to review of the effectiveness of import restrictions in place for Peru, Guatemala, Bolivia, El Salvador and Mali; and (2) to a discussion of internal operating procedures and a review of statutory interpretations may be closed to the public.

Dated: August 31, 1995.

Penn Kemble,

Acting Director, United States Information Agency.

[FR Doc. 95–22126 Filed 9–6–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee; Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. at the Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC:

Subcommittee for	Date
Alcoholism and Drug Dependence.	September 21 and 22, 1995.
Hematology	September 21 and 22, 1995.
Nephrology	September 26 and 27, 1995.
Respiration	September 27 and 28, 1995.
General Medical Science.	September 29 and 30, 1995.
Surgery	September 30 and October 1, 1995.
Cardiovascular	October 2 and 3, 1995.
Endocrinology	October 9 and 10, 1995.
Mental Health and Behavioral Sciences.	October 11 and 12, 1995.
Aging and Clinical Geriatrics.	October 12 and 13, 1995.
Infectious Diseases	October 16 and 17, 1995.
Neurobiology	October 16 and 17, 1995.
Immunology	October 19 and 20, 1995.
Oncology	October 19 and 20, 1995.
Gastroenterology	October 23 and 24, 1995.
Medical Research Service Merit Review Committee.	December 5, 1995.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each speciality by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Subcommittee meetings will be closed to the public after approximately one hour from the start for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 565–5942, at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Subcommittees may be obtained from this source.

Dated: August 31, 1995.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–22312 Filed 9–6–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 173
Thursday, September 7, 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).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 12, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, September 14, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995–29: David W. Syme,Treasurer, Christopher Cox Congressional Committee
Advisory Opinion 1995–30: Craig Snyder, Deputy Chairman, Arlen Specter, 96 Regulatons:
MCFL Regulations: Revised Rules on Facilitation, Candidate Appearances, Endorsements, Voter Guides and Meeting Rooms
Draft Final Rules and Accompanying Explanation and Justification on Amendments to the Communications Disclaimer Requirements (11 CFR 110.11)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–22390 Filed 9–5–95; 3:42 pm]

BILLING CODE 6715–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 19, 1995 Board of Directors Meeting

TIME AND DATE: Tuesday, September 19, 1995, 1:00 p.m. (Open Portion), 1:30 p.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 p.m. to 1:30 p.m. Closed portion will commence at 1:30 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. New Appointment.
3. Approval of 6/13/95 Minutes (Open Portion).
4. Meeting schedule through March 1995.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Finance Project in Russia.
2. Finance Project in Russia.
3. Insurance Project in Peru.
4. Finance Project in Brazil.
5. Insurance Project in Trinidad and Tobago.
6. Finance Project in Ghana
7. Proposed FY Budget Request.
8. Pending Major Projects.
9. Approval of 6/13/95 Minutes (Closed Portion).

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: September 1, 1995.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 95–22385 Filed 9–5–95; 3:41 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 4, 1995.

A closed meeting will be held on Friday, September 8, 1995, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, September 8, 1995, at 10 a.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Formal order of investigation.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 1, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–22326 Filed 9–5–95; 12:48 pm]

BILLING CODE 8010–01–M

Federal Register

Thursday
September 7, 1995

Part II

Environmental Protection Agency

40 CFR Parts 280 and 281
Underground Storage Tanks—Lender Liability; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL–5292–1]

RIN 2050–AD67

Underground Storage Tanks—Lender Liability

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule under the Resource Conservation and Recovery Act (RCRA), Subtitle I—Regulation of Underground Storage Tanks. This rule limits the regulatory obligations of lending institutions and other persons who hold a security interest in a petroleum underground storage tank (UST) or in real estate containing a petroleum underground storage tank, or that acquire title or deed to a petroleum UST or facility or property on which an UST is located. This final rule specifies conditions under which these ''security interest holders'' may be exempted from the RCRA Subtitle I corrective action, technical, and financial responsibility regulatory requirements that apply to an UST owner and operator. This rule should result in additional capital availability for UST owners, many of whom are small businesses, and will assist them in meeting environmental requirements by improving their facilities.

EFFECTIVE DATE: This rule is effective December 6, 1995.

ADDRESSES: The official record for this rulemaking, Docket Number UST 3–18, is located in the UST Docket, room M2616 of the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials, including a comprehensive document containing EPA's response to comments received on the proposed rule, may be reviewed by appointment by calling (202) 260–9720. Copies of docket materials may be made at a cost of $0.15 per page. The mailing address is U.S. Environmental Protection Agency, OUST Docket (5305), 401 M Street, SW., Washington, DC 20460. Please note that EPA is planning to relocate the UST Docket to Arlington, VA during September 1995. You may call (202) 260–9720 for up-to-date information on access to the docket.

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact the RCRA/Superfund Hotline, U.S. Environmental Protection Agency, Washington, DC. 20460, (800) 424–9346 (toll-free) or (703) 412–9810 (local). For the hearing impaired, the number is (800) 553–7672 (toll-free), or (703) 412–3323 (local). For technical information on this rule, contact John Heffelfinger in the EPA Office of Underground Storage Tanks at (703) 308–8881.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

EPA is establishing regulatory criteria specifying which RCRA Subtitle I requirements are applicable to a secured creditor. Section 9003(h)(9) of RCRA exempts from the definition of ''owner,'' for purposes of § 9003(h)—EPA Response Program for Petroleum, those persons who, without participating in the management of the UST or UST system, and who are not otherwise engaged in petroleum production, refining, and marketing, maintain indicia of ownership in an UST or UST system primarily to protect a security interest. Those most affected by this ''security interest exemption'' include private lending institutions or other persons that provide loans secured by real estate containing an UST or UST system, or that acquire title to, or other indicia of ownership in, a contaminated UST or UST system.[1] However, the security interest exemption is not limited solely to lending institutions; it potentially applies to any person whose indicia of ownership in an UST or UST system is maintained primarily to protect a security interest.

The RCRA Subtitle I security interest exemption affects not only secured creditors but also UST and UST system owners who seek capital through the private lending market. Today's rule provides a regulatory exemption from the federal UST regulatory requirements for those persons who provide secured financing to UST and UST system owners. EPA expects this rule, in conjunction with the statutory exemption in § 9003(h)(9), to encourage the extension of credit to credit-worthy UST owners. Until now, EPA believes that concerns over environmental liability have made a significant number of lenders reluctant to make loans to otherwise credit-worthy owners and operators of USTs. The free flow of credit to UST owners (many of whom are small entities that may rely on secured financing mechanisms for capital) is expected to assist UST owners in meeting their obligations to upgrade, maintain, or otherwise comply with RCRA Subtitle I and other environmental requirements. Conversely, the lack of such capital may adversely affect the ability of an UST owner to meet its obligations under Subtitle I, with concomitant adverse environmental impacts from USTs and

[1] Under the laws of some states, an interest in real property may include an interest in USTs or UST systems located on that property. See Sunnybrook Realty Co. Inc. v. State of New York, Kesbec, Inc. v. State of New York, Claim Nos. 32844, 33125, 15 Misc. 2d 739; 182 N.Y.S. 2d 983. Of course, the loan documents may specifically include or exclude USTs as collateral securing the obligation.

UST systems that are out of compliance due to the lack of financing to make the necessary improvements.

The Agency is also concerned that if otherwise credit-worthy UST owners and operators are unable to obtain financing to perform leak detection tests, or to upgrade or replace deficient tanks, the market for UST equipment could be adversely affected, thereby limiting the availability and/or affecting the cost of such equipment. In addition, a lack of adequate capital could produce a ripple effect which would cut across other portions of the UST-related industrial sector for equipment and services. For example, based on letters received from UST equipment manufacturers, EPA believes that this sector has suffered as a direct result of the capital squeeze on UST owners and operators. The Agency is further concerned that many UST equipment manufacturers may find it increasingly difficult to sustain their production of UST equipment. Unnecessary constrictions on the free flow of capital for UST improvements to meet regulatory requirements could force companies to abandon their production of UST equipment or to close altogether, and it may have adverse impacts on the environment by inhibiting future investment in or development of new UST technological innovations.

The preamble to this rule is structured as follows: The following section briefly describes the UST program. This section is followed by a discussion of the rule, which includes a description of the various options lenders may exercise both pre- and post-foreclosure with respect to regulatory compliance for a secured UST or UST system. The rule concludes with regulatory text.

II. Description of the UST Regulatory Program

Based on the Agency's study of the banking community's lending practices and discussions with representatives of both lenders and borrowers, EPA believes that the lending community in general is not particularly familiar with the UST statutory scheme and regulatory program. Because USTs and UST systems are likely to be used as collateral in securing loans to borrowers, the Agency believes that it is appropriate and useful to briefly describe the UST program in the preamble of this rule. The following discussion is general in nature and is intended to provide a framework for lenders or others to better understand the scope and intent of the program; it is not intended to be a substitute for the regulations themselves.

Under the Hazardous and Solid Waste Amendments of 1984, Congress responded to the increasing threat to groundwater posed by leaking underground storage tanks by adding Subtitle I to the Resource Conservation and Recovery Act. Subtitle I required EPA to develop a comprehensive regulatory program for USTs storing petroleum or hazardous substances. Congress directed the Agency to publish regulations that would require owners and operators of new tanks and tanks already in the ground to prevent and detect leaks, cleanup leaks, and demonstrate that they are financially capable of cleaning up leaks and compensating third parties for resulting damages.

EPA's UST regulations, 40 CFR Parts 280 and 281, apply to any person who owns or operates an UST or UST system. The term ''owner'' is defined in the statute generally to mean any person who owns an UST used for the storage, use, or dispensing of substances regulated under Subtitle I of RCRA (which includes both petroleum and hazardous substances) (§ 9001(3), 42 USC 6991(3)). Owners are responsible for complying with the ''technical requirements,'' ''financial responsibility requirements,'' and ''corrective action requirements'' specified in the statute and regulations. These requirements are intended to ensure that USTs are managed and maintained safely, so that they will not leak or otherwise cause harm to human health and the environment. In addition, should a leak occur, the requirements provide that the owner is responsible for addressing the problem. These same requirements apply to any person who ''operates'' an UST system. The term ''operator'' is very broad and means ''any person in control of, or having responsibility for, the daily operation of the underground storage tank'' (§ 9001(4), 42 USC 6991(4)). As with owners, there may be more than one operator of a tank at a given time. Each owner and operator has obligations under the statute and regulations. In this respect, it is important to understand that a person may have obligations under Subtitle I either as an owner or as an operator, or both.

The following subsections describe briefly each of the major components of the UST regulatory program applicable to persons who own or operate USTs and UST systems.

A. UST Technical Standards

The technical standards of 40 CFR Part 280 referred to here include: Subpart B—UST systems: Design, Construction, Installation, and Notification (including performance standards for new UST systems, upgrading of existing UST systems, and notification requirements); Subpart C—General Operating Requirements (including spill and overfill control, corrosion protection, reporting and recordkeeping); Subpart D—Release Detection; § 280.50 (reporting of suspected releases) of Subpart E—Release Reporting, Investigation, and Confirmation; and Subpart G—Out of Service UST Systems (including temporary and permanent closure). These regulations impose obligations upon UST owners and operators, separate from the Subtitle I corrective action requirements discussed in Section II. B of this preamble.

1. Leak Prevention

Before EPA regulations were issued, most tanks were constructed of bare steel and were not equipped with release prevention or detection features. 40 CFR § 280.21 requires UST owners and operators to ensure that their tanks are protected against corrosion and equipped with devices that prevent spills and overfills no later than December 22, 1998. Tanks installed before December 22, 1988 must be replaced or upgraded by fitting them with corrosion protection and spill and overfill prevention devices to bring them up to new-tank standards. USTs installed after December 22, 1988 must be fiberglass-reinforced plastic, corrosion-protected steel, a composite of these materials, or determined by the implementing agency to be no less protective of human health and the environment, and must be designed, constructed, and installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. Piping installed after December 22, 1988 generally must be protected against corrosion in accordance with a national code of practice. All owners and operators must also ensure that releases due to spilling or overfilling do not occur during product transfer and that all steel systems with corrosion protection are maintained, inspected, and tested in accordance with § 280.31.

2. Leak Detection

In addition to meeting the leak prevention requirements, owners and operators of USTs must use a method listed in §§ 280.43 through 280.44 for detecting leaks from portions of both tanks and piping that routinely contain product. Deadlines for compliance with the leak detection requirements have been phased in based on the tank's age: The oldest tanks, which are most likely

to leak, had the earliest compliance deadlines. Phase-in of the leak detection requirements was completed in 1993, and all UST systems should now be in compliance with these requirements.

3. Release Reporting

UST owners and operators must, in accordance with § 280.50, report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, the discovery of any released regulated UST substances, or any suspected release. Unusual operating conditions or monitoring results indicating a release must also be reported to the implementing agency.

4. Closure

Owners or operators who would like to take tanks out of operation must either temporarily or permanently close them in accordance with 40 CFR part 280 subpart G—Out-of-Service UST Systems and Closure. When UST systems are temporarily closed, owners and operators must continue operation and maintenance of corrosion protection and, unless all USTs have been emptied, release detection. If temporarily closed for three months or more, the UST system's vent lines must be left open and functioning, and all other lines, pumps, manways, and ancillary equipment must be capped and secured. After 12 months, tanks that do not meet either the performance standards for new UST systems or the upgrading requirements (excluding spill and overfill device requirements) must be permanently closed, unless a site assessment is performed by the owner or operator and an extension is obtained from the implementing agency. To close a tank permanently, an owner or operator generally must: Notify the regulatory authority 30 days before closing (or another reasonable time period determined by the implementing agency); determine if the tank has leaked and, if so, take appropriate notification and corrective action; empty and clean the UST; and either remove the UST from the ground or leave it in the ground filled with an inert, solid material.

5. Notification, Reporting, and Recordkeeping

UST owners who bring an UST system into use after May 8, 1986 must notify state or local authorities of the existence of the UST and certify compliance with certain technical and other requirements, as specified in § 280.22. Owners and operators must also notify the implementing agency at least 30 days (or another reasonable time period determined by the implementing agency) prior to the permanent closure of an UST. In addition, owners and operators must keep records of testing results for the cathodic protection system, if one is used; leak detection performance and upkeep; repairs; and site assessment results at permanent closure (which must be kept for at least three years).

B. Corrective Action Requirements

Owners and operators of UST systems containing petroleum or hazardous substances must investigate, confirm, and respond to confirmed releases, as specified in §§ 280.51 through 280.67. These requirements include, where appropriate: Performing a release investigation when a release is suspected or to determine if the UST system is the source of an off-site impact (investigation and confirmation steps include conducting tests to determine if a leak exists in the UST or UST system and conducting a site check if tests indicate that a leak does not exist but contamination is present); notifying the appropriate agencies of the release within a specified period of time; taking immediate action to prevent any further release (such as removing product from the UST system); containing and immediately cleaning up spills or overfills; monitoring and preventing the spread of contamination into the soil and/or groundwater; assembling detailed information about the site and the nature of the release; removing free product to the maximum extent practicable; investigating soil and groundwater contamination; and, in some cases, outlining and implementing a detailed corrective action plan for remediation.

C. Financial Responsibility Requirements

The financial responsibility regulations (40 CFR part 280 subpart H) require that UST owners or operators demonstrate the ability to pay the costs of corrective action and to compensate third parties for injuries or damages resulting from the release of petroleum from USTs. The regulations require all owners or operators of petroleum USTs to maintain an annual aggregate of financial assurance of $1 million or $2 million, depending on the number of USTs owned. Financial assurance options available to owners and operators include: Purchasing commercial environmental impairment liability insurance; demonstrating self-insurance; obtaining guarantees, surety bonds, or letters of credit; placing the required amount into a trust fund administered by a third party; or relying on coverage provided by a state assurance fund.

D. State Program Approval Regulations

Subtitle I of RCRA allows state UST programs approved by EPA to operate in lieu of the federal program. EPA's state program approval regulations under 40 CFR Part 281 set standards for state programs to meet.

E. Scope of the UST Program

This rule applies only to petroleum underground storage tanks that are subject to Subtitle I of RCRA. There are certain types or classes of tanks that are excluded from Subtitle I of RCRA. Therefore, the provisions of this rule do not apply to holders of security interests in excluded tanks. Among those tanks specifically excluded by statute are: Farm and residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; tanks used for storing heating oil for consumptive use on the premises where stored; tanks stored on or above the floor of underground areas (such as basements or tunnels); septic tanks; systems for collecting stormwater or wastewater; and flow-through process tanks (42 U.S.C. § 6991(1)).

III. The UST Security Interest Exemption and Intent of Today's Rule

A. Overview

Today's regulation addresses the requirements of Subtitle I that are applicable to a person who holds a security interest in a petroleum UST or UST system, or in a facility or property on which a petroleum UST or UST system is located, from the time that the person extends the credit up through and including foreclosure and re-sale. A holder of a security interest who satisfies the conditions in this rule will not be considered either an ''owner'' or an ''operator'' of an underground storage tank for purposes of compliance with Subtitle I regulatory requirements.

The security interest exemption under Subtitle I, § 9003(h)(9) of RCRA, 42 U.S.C. § 6991b(h)(9), on which this rule is based, provides:

> As used in this subsection, the term ''owner'' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank.

While limited legislative history exists concerning the RCRA Subtitle I security interest exemption, EPA believes this provision is intended to provide protection from liability for a

person whose only connection with a tank is as the holder of a security interest; *i.e.*, a bank or other creditor who has made a loan to a borrower (commonly the tank's owner) and who has in return secured the loan by taking a security interest in the tank or in the property on which the tank is located. No guidance or other indication is available concerning the types of activities that Congress considered to be consistent with the Subtitle I security interest exemption, or about the types of activities that Congress considered to be impermissible participation in an UST or UST system's management.

The statutory exemption explicitly addresses liability for corrective action at petroleum UST-contaminated sites. Other portions of the statute and regulations applicable to an ''owner'' of a tank include 40 CFR part 280 subparts B, C, D, E (§ 280.50 only), and G (hereafter referred to as the ''UST technical standards'' for purposes of this rule), and Subpart H—Financial Responsibility. The statute is silent with respect to a holder's liability for these other requirements solely as a consequence of having ownership rights in a tank primarily to protect a security interest. The Agency does not believe that these limited ownership rights rise to the level of full ''ownership'' sufficient to make the holder an ''owner'' of the tank, as that term is used in § 9001(3) of RCRA Subtitle I. Therefore, EPA is providing, under its broad rulemaking authority in § 9003, that a holder who meets the criteria specified in this rule (i.e., whose only connection with the tank is as the *bona fide* holder of a security interest in a petroleum UST or UST system or in a facility or property on which a petroleum UST or UST system is located) is not subject to the UST technical standards, corrective action, and financial responsibility requirements otherwise applicable to a tank owner. EPA believes that this is both appropriate under the Agency's rulemaking authority and consistent with Congressional intent in providing the § 9003(h)(9) exemption for those persons who provide only financing to owners of a tank. Accordingly, a qualifying holder will not be required to comply with the full panoply of EPA regulations implementing Subtitle I that apply to tank owners prior to or following foreclosure, provided that the requirements of today's rule are satisfied.

With respect to a holder's potential to be an ''operator'' of a tank prior to foreclosure, consistent with the provisions of this rule, the holder typically will not be involved in the day-to-day operations of the tank, and will therefore not incur liability as an ''operator.'' [2] By foreclosing, however, the holder takes affirmative action with respect to the tank and displaces the borrower; therefore, by necessity, the holder has taken ''control of * * * [and] responsibility for * * *'' the tank, and therefore could be considered a tank operator under the definition at 42 USC 6991(4). However, under today's rule, a foreclosing holder can avoid regulation as an UST ''operator'' in certain circumstances. In general, a holder will not be considered an UST ''operator'' if petroleum is not added to, stored in, or dispensed from the UST. In order to satisfy this condition, this rule allows a holder to empty the UST within a certain period of time after foreclosure, and undertake specified minimally burdensome and environmentally protective actions to secure and protect the UST or UST system. On the other hand, a holder who operates a tank by, for example, storing or dispensing petroleum following foreclosure will be subject to the full range of requirements applicable to any person operating a tank (including corrective action requirements).

In developing today's rule, EPA examined the potential obligations under Subtitle I of government entities that act as conservators or receivers of assets acquired from failed lending and depository institutions, such as the Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC). Where a government entity or its designee is acting as a conservator or receiver, EPA interprets the security interest exemption RCRA Subtitle I section 9003(h)(9) to preclude the imposition of the insolvent estate's liabilities against the government entity acting as the conservator or receiver, and considers the liabilities of the institution being administered to be limited to the institution's assets. The situation of a conservator or receiver of a failed or insolvent lending institution is analogous to that of a trustee (particularly a trustee in bankruptcy) that is administering an insolvent's estate and, in accordance with those principles, the insolvent's liabilities generally are to be satisfied from the estate being administered and not from the assets of the conservator or receiver. Therefore, satisfaction of an estate's debts or liabilities would not reach the general assets of the FDIC, the RTC, those of any other government entity acting in a similar capacity, or those of a private person acting on behalf of the conservator or receiver. (The broader issue of trustee and fiduciary liability is discussed in section IV.C. of this preamble.)

B. Legal Authority

EPA is promulgating today's rule to close a gap in the Subtitle I security interest exemption that must be addressed in order to provide holders with certainty regarding their responsibility for UST regulatory compliance. While the statutory exemption explicitly applies to holders who become owners of underground storage tanks, the exemption does not address holders in the capacity of an UST operator. The Agency believes that without promulgating a rule under EPA's broad grant of rulemaking authority applying the protection found in the statutory security interest exemption to holders as operators as well as owners, the statutory exemption may be rendered virtually meaningless, since an owner of an UST is also typically an UST operator. EPA does not believe that Congress, in creating section 9003(h)(9), intended for an otherwise exempt holder of a security interest to nonetheless fall subject to UST regulatory obligations as an operator. As such, EPA's exercise of its rulemaking authority in this rule is appropriate and, perhaps, needed to fully effectuate the purpose of the statute.

In the proposed rule, EPA cited the legal authority that provides the basis for development of the UST lender liability rule—section 9003(b), 42 U.S.C. 6991b(b) of RCRA Subtitle I, and briefly explained the difference between the statutory authority supplied under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the vacated Superfund lender liability rule and the authority supplied under RCRA Subtitle I for an UST lender liability rule. While several commenters stated their belief that EPA has sufficient authority under RCRA to promulgate a regulation regarding UST lender liability, some commenters also expressed concern that the rule would be challenged in light of the outcome of litigation on the CERCLA lender liability rule.[3]

[2] Of course, a lender which has control of or responsibility for the daily operation of a tank would be an ''operator'' under § 9001(4), and therefore subject to all requirements applicable to an operator of a tank, including corrective action. Similarly, such acts may also constitute ''participation in the management'' of the tank, which would void the § 9003(h)(9) exemption and obligate the lender to comply with these same technical, financial, and corrective action requirements as an owner.

[3] On Feb. 4, 1994, the U.S. Court of Appeals for the D.C. Circuit vacated EPA's 1992 rule on lender

Continued

EPA believes that the authority granted in section 9003 of Subtitle I clearly provides the Agency with broad rulemaking authority, as well as explicit rulemaking authority to, in its discretion, exempt certain classes of owners and operators (i.e., holders of security interests as described in this rule) from the UST technical standards, corrective action requirements, and financial responsibility requirements. Section 9003 expressly directs the Agency to ''promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.'' Section 9003(b) permits the Agency, in promulgating regulations under Subtitle I, to make distinctions in its UST regulations between types or classes of tanks, based upon, *inter alia*, ''the technical capability of the owners and operators.'' Because security interest holders are typically not as a general matter engaged in the operation and maintenance of USTs (and thus do not possess the technical capacity of most UST owners and operators), EPA does not believe that requiring them to comply with highly detailed technical requirements is appropriate where requiring them to do so is not necessary for protection of human health and the environment. Furthermore, the Agency believes an exemption from these regulatory requirements is appropriate in the context of this rule, where an exemption will serve, albeit indirectly, to advance the goals of Subtitle I by making credit more available and thus aiding in the implementation of tank upgrading and replacement requirements.

However, this authority is not open-ended, as section 9003(a) requires EPA to promulgate regulations that are protective of human health and the environment. Without compromising the level of protectiveness established by the UST program, EPA previously relied on its section 9003(b) authority when it excluded a group of owners and operators from RCRA Subtitle I requirements in the final Financial Responsibility Rule (53 FR 43322, Oct. 26, 1988). (In relevant part, the preamble to the final Financial Responsibility Rule states: ''The Agency does not interpret the Congressional intent of Subtitle I to preclude exempting any class of USTs from otherwise applicable requirements when the Agency has determined that such requirements are not necessary to protect human health or the environment.'') That rule exempted states and the federal government from the UST financial responsibility requirements since those entities were, as a class, able to satisfy the purpose of the financial responsibility requirements in the absence of regulation.

Similarly, for purposes of this rule, EPA believes that it is reasonable, in light of the purposes behind this rule, to exempt a holder from RCRA Subtitle I technical standards, corrective action requirements, and financial responsibility requirements as an operator if its USTs are empty and secure (as explained later in today's rule) or if the holder chooses to also engage in environmentally beneficial activities (as discussed later in this preamble). Because of the eligibility conditions a holder must meet before enjoying this regulatory exemption, EPA's UST regulations will satisfy the statutory requirement that they be protective of human health and the environment.

C. Real Property Used as Collateral

A number of commenters pointed out that the proposed rule conveys the impression that under common commercial practice a security interest holder typically holds an UST or UST system as collateral for a loan obligation. These commenters went on to state that such an impression is incorrect. They maintained that in a typical lending relationship, the lender holds a security interest not in the UST or UST system, but rather in the real property on which the UST or UST system is located.

EPA recognizes that borrowers generally pledge real property as collateral rather than tanks, which are considered fixtures of real property under many state laws. While the Agency failed to refer to real property in its definition of the term, ''holder,'' it specifically defined ''security interest'' as meaning ''an interest in a petroleum UST or UST system or in the facility or property on which the UST or UST system is located, created or established for the purpose of securing a loan or other obligation.'' EPA acknowledges that the phrase, ''UST or UST system or facility or property on which the UST or UST system is located,'' was not used consistently throughout the proposed rule. This was due in part to the way in which Subtitle I's requirements are structured—UST compliance responsibility rests with the owner or operator of the UST or UST system, not the property on which the UST or UST system is located. Therefore, when describing a holder's liability as an owner or operator under Subtitle I requirements, EPA is obliged to address that liability in terms of how it relates to the ownership or operation of the UST or UST system. Nevertheless, in order to maintain consistency with commercial practice and to clarify that the exemption applies to a holder's collateral in the real estate containing an UST, as well as to the UST itself, the Agency has applied the use of the term, ''UST or UST system or facility or property on which the UST or UST system is located,'' throughout today's final rule, whenever appropriate.

D. Abandoned Tanks

A few commenters expressed concern about the effect that the rule would have upon the number of contaminated sites for which there might be no identifiable or financially capable liable party, which might increase the number of abandoned tanks that would have to be cleaned up with public funding. There are a number of reasons why EPA does not expect the rule to increase the number of abandoned tanks.

First, this regulation is intended to provide clarity and meaning to the existing federal statutory security interest exemption. The rule does not decrease the universe of regulated tanks from those currently regulated under Subtitle I. Further, the rule does not affect the legal obligations to comply with applicable Subtitle I requirements of a previous owner or operator who abandons a tank. Such previous UST owners and operators can be held liable for regulatory compliance or cost recovery under the Leaking Underground Storage Tank Trust Fund. Financial condition does not affect the liability of a tank owner or operator under Subtitle I.

Second, the rule is expected to help UST owners and operators acquire capital to keep their businesses healthy and in compliance with environmental requirements, and in the process, reduce the number of abandoned tanks and potential petroleum releases. Furthermore, the Agency believes that by expanding capital availability, this rule will encourage early compliance with the upcoming 1998 Subtitle I requirement regarding tank upgrading or

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liability under CERCLA in Kelley, et al. v. EPA, No. 93–1312. The CERCLA rule interpreted a statutory exemption under CERCLA that is similar to that under RCRA Subtitle I. The Court held that ''EPA lack[ed] statutory authority to restrict by regulation private rights of action arising under the statute * * *'' Kelley, slip op. at 3. Whereas CERCLA contains a provision regarding private rights of action, there is no explicit provision for private rights of action contained in RCRA Subtitle I. Furthermore, § 9003 of Subtitle I expressly confers EPA a broad rulemaking authority; to the extent that the grants of rulemaking authority were not sufficiently explicit under CERCLA, such is not the case under RCRA Subtitle I.

replacement. UST owners who acquire capital to upgrade or replace old, corroded tanks earlier than 1998 greatly contribute to preventing further petroleum contamination.

While contemplating the effect this rule might have upon the number of abandoned tanks, the Agency also recognized that many holders currently abandon UST properties they hold as collateral rather than foreclosing on them and risking potential liability for cleanup costs. EPA believes that this rule will actually improve protection of human health and the environment by providing an incentive to holders who are interested in taking advantage of this regulatory exemption to empty any tanks they acquire through foreclosure, thus preventing future releases. As a result of the rule's increasing the number of holders who take advantage of the security interest exemption and subsequently extend more UST-related loans, EPA expects there to be fewer abandoned or so-called orphan tanks and fewer releases that might otherwise occur due to the lack of capital available for tank upgrading and replacement.

E. Liability of a Holder as an Owner of an Underground Storage Tank or Underground Storage Tank System

The following sections describe the key terms used in this rule. For the most part, these are also terms used in the § 9003(h)(9) security interest exemption. This section specifies the activities that are not ''participating in the management'' of a tank and which a holder may under today's rule, engage in consistent with Subtitle I regulatory requirements.

1. Petroleum Production, Refining, and Marketing

''Production of petroleum'' includes, but is not limited to, activities involved in the production of crude oil or other forms of petroleum, as well as the production of petroleum products from purchased materials, either domestically or abroad. ''Refining'' includes the processes of cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products. ''Marketing'' includes the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes. A holder who stores petroleum products in USTs for on-site consumption only, such as to provide heat to an office building or to refuel its own vehicles, is not considered to be engaged in petroleum production, refining, or marketing for the purposes of the UST regulatory program.

2. Indicia of Ownership

For purposes of this rule, ''indicia of ownership'' means ownership or evidence of an ownership interest in a petroleum UST or UST system, or in a facility or property on which a petroleum UST or UST system is located. This definition is not intended to limit or qualify type, quality, or quantity of ownership indicia that may be held by a person for the purpose of the regulatory exemption. The nature of the ownership interest may vary according to the type of secured transaction and the nature of the holder's relationship (such as that of a guarantor or surety). Accordingly, indicia of ownership may be evidence of any ownership interest or right to an UST or UST system, such as a security interest, an interest in a security interest, or any other interest in an UST or UST system. For purposes of this rule, examples of such indicia include, but are not limited to, a mortgage, deed of trust, or legal or equitable title obtained pursuant to foreclosure or its equivalents, a surety bond, guarantee of an obligation, or an assignment, lien, pledge, or other right to or form of encumbrance against a petroleum UST or UST system, or a facility or property on which a petroleum UST or UST system is located. Accordingly, it is not necessary for a person to hold actual title or a security interest in order to maintain some indicia or evidence of ownership in an UST or UST system.

3. Primarily To Protect a Security Interest

The term, ''primarily to protect a security interest'' as used in this regulation, means a holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation. EPA intends this phrase to require that the ownership interest be maintained primarily for the purpose of, or primarily in connection with, securing payment or performance of a loan or other obligation (a security interest), and not an interest in the UST or UST system or facility or property on which the UST or UST system is located held for some other reason.

A security interest may arise pursuant to a variety of statutory or common law financing transactions. While a security interest is ordinarily created by mutual consent, such as a secured transaction within the scope of Article 9 of the Uniform Commercial Code, there are other means by which a security interest may be created, some of which may or may not be the result of a consensual arrangement between the parties to the transaction. In general, a transaction that gives rise to a security interest within the ambit of this rule is one that provides the holder with recourse against the UST or UST system or facility or property on which the UST or UST system is located; the purpose of the interest is to secure the repayment of money, the performance of a duty, or of some other obligation. See generally J. White & R. Summers, Handbook on the Uniform Commercial Code § 22 (2d Ed. 1980); Restatement of Security (1941).

As a matter of general law, security interests may arise from transactions in which an interest in an UST or UST system is created or established for the purpose of securing a loan or other obligation, and includes mortgages, deeds of trust, liens, and title held pursuant to lease financing transactions. Security interests may also arise from transactions such as sale-and-leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements or accounts receivable financing agreements, consignments, among others, provided that the transaction creates or establishes an interest in an UST or UST system for the purpose of securing a loan or other obligation.

Some commenters were confused by and requested clarification of the term ''lease financing transaction in which the lessor does not select initially the leased property,'' as used is the rule. A ''lease financing transaction'' is a common financing transaction for equipment and other types of personal property, and is treated under this rule as a security interest. These are leases where the form of the transaction provides for the lessor to acquire title to the property for and at the discretion of the lessee. The lessor then recovers its loan (i.e., the purchase price of the property) through rental payments from the lessee and, in some cases, from the sale of the property to the lessee or a third party at the end of the lease. Thus, the lessee is the borrower and the lessor is the holder of a security interest in the property.

At the beginning of the lease financing transactions covered by this rule, the lessor does not initially select the leased property. Instead, this is done by the lessee or a third party. Further, during the initial lease or any re-lease, the lessor does not control the daily operation and maintenance of the property. The primary reason the lessor holds indicia of ownership in the property is to protect its security interest in the event that the debtor/lessee fails to pay off its obligation to

the lessor. If a debtor/lessee defaults, a lessor may acquire the property through a variety of mechanisms, and is still considered to hold indicia of ownership under this rule provided that it complies with the other provisions of this rule.

In contrast to the preceding discussions, ''indicia of ownership'' held ''primarily to protect [a] security interest'' do not include evidence of interests in the nature of an investment in the UST or UST system or in the facility or property on which the UST or UST system is located, or an ownership interest held primarily for any reason other than as protection for a security interest. The person holding ownership indicia to protect a security interest may have additional, secondary reasons for maintaining the indicia in addition to protecting a security interest; maintaining indicia for reasons in addition to protecting a security interest may be consistent with the exemption and this rule. However, any such additional reasons must be secondary to protecting a security interest in the secured UST or UST system or in the facility or property on which the UST system is located. EPA recognizes that lending institutions have revenue interests in the loan transactions that create security interests; such revenue interests are not considered to be investment interests, but are considered secured transactions falling within the security interest regulatory exemption.

4. ''Holder'' of Ownership Indicia

A ''holder'' as used in this regulation is a person who maintains ownership indicia primarily to protect a security interest, however acquired or held. The term ''holder'' includes the initial holder (such as the loan originator) and any subsequent holder, such as a successor-in-interest, subsequent purchaser on the secondary market, loan guarantor, surety, or other person who maintains indicia of ownership primarily to protect a security interest. The term also includes any person acting on behalf of or for the benefit of the holder, such as a court-appointed receiver or a holder's agent, employee, or representative.

Finally, it should be noted that lending institutions, which typically hold a large number of security interests, may also act in some trustee, fiduciary, or other capacity with respect to an UST or UST system. However, this rule does not address circumstances in which a lending institution or any person acts as a trustee, or in a non-lending capacity, or has any interest in an UST or UST system other than as provided in this rule. Because this regulation, as well as the exemption in § 9003(h)(9), addresses only persons who maintain a ''security interest,'' any discussion of persons with other interests or involvement in an UST or UST system is beyond the scope of this rule. Of course, a trustee or other fiduciary, or any other person who holds indicia of ownership in the UST or UST system primarily to protect a security interest, may fall within this security interest regulatory exemption.

5. Participating in Management

As used in this rule, ''participation in management'' means actual involvement in the management or control of decisionmaking related to the operational aspects or day-to-day operations of an UST or UST system by the holder. Participation in management does not include the mere capacity or unexercised right or ability to influence the operational aspects or day-to-day operations of an UST or UST system or facility or property on which an UST or UST system is located. For purposes of this rule, actual involvement in the operational aspects or day-to-day operation of the UST or UST system means use of the UST to contain petroleum, and includes the storage, filling, or dispensing of petroleum contained in an UST or UST system. For purposes of this rule, a holder performing the functions of a plant manager, operations manager, chief operating officer, chief executive officer, and the like, of the facility or business at which the UST is located is considered to be exercising management control or decisionmaking authority over the operational aspects of the UST or UST system and therefore, participating in management, unless the responsibilities for the position specifically exclude all UST operational responsibilities. Control over the operational aspects of management should not be confused, however, with those activities which constitute administrative or financial management, or involvement in environmental compliance activities or activities taken to protect human health and the environment. Involvement in administrative, financial management, or environmental compliance activities does not, by itself, constitute participation in management under this rule.

The proposed rule included a two-pronged general test of management participation that attempted to distinguish between the scope of general activities acceptable for a holder to undertake, and those activities that could be carved out purely as operational activities rather than other activities related to UST or UST system responsibilities. However, the Agency received a number of comments on the proposed rule indicating that the general test merely added confusion in determining whether or not a holder was engaging in management participation. Consequently, the general test has been omitted in this final rule. Instead, the Agency has concluded that management participation is best defined as actual involvement in the management or control of decisionmaking related to the operational aspects or day-to-day operations of the UST or UST system, and not the financial, administrative or environmental compliance aspects of the UST or UST system or facility or property on which the UST or UST system is located.

The following sections discuss and describe the specific activities of a holder that the rule defines as not being instances of participation in management by a person holding indicia of ownership primarily to protect a security interest in the UST or UST system or facility or property on which an UST or UST system is located. Therefore, conduct of these activities will not, by itself, void the exemption for holders of security interests provided under this rule.

It bears repeating, however, that the activities identified in this rule do not specify the only activities that may be undertaken by a holder without losing the protection of this security interest regulatory exemption, and one should not infer that activities not specifically mentioned in this rule are automatically considered evidence of participation in management—those must be addressed on a case-by-case basis, generally determined by whether or not the holder is involved in the management or control of decisionmaking related to the operational aspects or day-to-day operations of an UST or UST system.

a. Actions that are not participation in management. Participation in the following activities will not exclusively, in themselves, exceed the bounds of this regulatory exemption: Policing the loan; undertaking financial work out with a borrower where the obligation is in default or in threat of default; undertaking foreclosing and winding up operations (as described later in this preamble); or preparing for sale or liquidation of the UST or UST system or facility or property on which the UST or UST system is located. In addition, the holder is not considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located, by monitoring the

borrower's business; by requiring or conducting environmental compliance activities related to the UST technical standards or other federal, state or local environmental laws and regulations; by requiring or conducting on-site investigations, including site assessments, inspections, and audits, of the environmental condition of the UST or UST system or facility or property on which the UST or UST system is located or of the borrower's financial condition; by requiring or conducting UST or UST system corrective action in compliance with 40 CFR part 280 subpart F or applicable state requirements in those states which have been delegated authority by EPA to administer the UST program; by monitoring other aspects of the UST or UST system considered relevant or necessary by the holder; by requiring certification of financial information or compliance with applicable duties, laws, or regulations, or by requiring other similar actions. Such oversight and obligations of compliance imposed by the holder are not considered part of the management of an UST or UST system or facility or property on which the UST or UST system is located. Although such oversight and obligations may inform and perhaps strongly influence the borrower's management of an UST or UST system, the holder is not considered to be participating in management where the borrower continues to be in control of the day-to-day operations of the UST or UST system.

The following sections describe in more detail two areas of special interest to those who commented on the proposed rule regarding actions in which holders may engage without jeopardizing their security interest exemption.

(1) Administrative and Financial Management. Administrative and financial management activities may be engaged in by a holder in the course of managing a loan portfolio and do not exceed the boundaries of the security interest exemption. Such activities may include providing financial or other assistance, environmental investigations or monitoring of the borrower's business and collateral, engaging in ''loan work out'' activities, foreclosing on a secured UST or UST system or facility or property on which an UST or UST system is located, winding down operations following foreclosure, or divesting itself of the foreclosed-on property containing an UST or UST system.

(2) Actions Taken to Protect Human Health and the Environment. In the proposed rule, EPA included a separate discussion of voluntary environmental activities undertaken by a holder to protect human health and the environment. A number of commenters stated that this discussion conflicted in part with the discussion entitled ''Participating in Management,'' thereby creating uncertainty regarding a holder's ability to conduct or to require a borrower to conduct site investigation and remediation activities, as well as leak prevention and leak detection activities. The ''Participating in Management'' section of the proposal's preamble contained information that simultaneously stated that environmental compliance activities would be considered evidence of participation in UST or UST system management, while describing several environmental compliance activities for which a lender could engage in without being considered to be participating in UST or UST system management. The Agency also stated in the proposal's preamble that lender actions which protect human health and the environment are appropriate to include within the scope of protected UST or UST system activities because of the special position and role played by holders in the Subtitle I program, and recognized by Congress in the UST security interest statutory exemption. Several commenters stated the importance of allowing security interest holders to undertake UST remediation to ensure that they can sell UST properties they acquire through foreclosure without jeopardizing protection from Subtitle I liability. Commenters stated that without such protection, many holders will remain reluctant to extend loans to UST owners and operators, undermining the intent of the statutory exemption. Several of these commenters asserted the advantage of allowing holders to take the lead in remediating contaminated sites, rather than waiting on state agencies with limited resources to conduct such cleanups. By directly undertaking such voluntary corrective actions, holders can more quickly eliminate threats to public safety, health, and the environment.

Thus, in order to clarify EPA's original intent to allow holders to voluntarily conduct site remediations as well as other environmentally beneficial activities on properties on which they hold a security interest, the Agency asserts that both environmental compliance activities and activities that are undertaken voluntarily to protect human health and the environment will not be considered evidence of participation in the management of an UST or UST system or facility or property on which an UST or UST system is located. A holder who undertakes these actions must do so in compliance with the applicable requirements in 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 USC § 6991c and 40 CFR part 281.

The following list provides examples of those activities that a holder can engage in without exceeding the bounds of the UST security interest exemption—these are examples only and do not represent all allowable activities: release response and corrective action for UST systems, environmental site investigations, tank upgrading and replacement, leak detection, and maintenance of corrosion protection. These activities are not required of a holder as a condition for obtaining the security interest exemption as an UST ''owner''; holders are allowed to participate in these activities without losing the protection of the exemption. Other activities that are not considered participation in management may be required of a holder as a condition for obtaining the security interest exemption as an UST ''operator.'' These activities are discussed later in this preamble, and include: tank emptying, capping and securing lines, permanent or temporary closure of an UST or UST system, and release reporting.

b. Actions taken throughout the loan transaction process that are not participation in management. In the proposed rule, EPA described the major components of the loan transaction process, including elements of that process that occur both prior to and after foreclosure. Most of that discussion is included in this final rule as well, in order to provide clarity and guidance to those UST owners and operators and security interest holders interested in this rule.

(1) Actions at the inception of the loan or other transaction giving rise to a security interest. Actions undertaken by a holder prior to the inception of a transaction in which indicia of ownership are held primarily to protect a security interest are not considered evidence of participation in the management of the UST or UST system. Thus, consultation and negotiation concerning the structure and terms of the loan or other obligation, the payment of interest, the payment period, and specific or general financial or other advice, suggestions, counseling, guidance, or other actions at or prior to the time that indicia of ownership are

first held are not, for purposes of this rule, considered evidence of participation in the management of the UST or UST system or facility or property on which the UST or UST system is located. Activities that take place prior to holding indicia of ownership are not relevant for determining whether the holder has participated in the management of the UST or UST system after the time that the holder acquires indicia of ownership.

In addition to such pre-loan involvement, a holder may determine (whether for risk management or any other business purpose) to undertake or require an environmental investigation (which could include a site assessment, inspection, and/or audit) of an UST or UST system securing the loan or other obligation. Such environmental investigation may be undertaken by the holder, for example, or the holder may require one to be conducted by another party (such as the borrower) as a condition of the loan or other transaction. Neither RCRA Subtitle I nor this rule require that such an environmental investigation be undertaken to qualify for the security interest exemption, and the obligations of a holder seeking to avail itself of the exemption cannot be based on or affected by the holder's not conducting or not requiring an environmental investigation in connection with the security interest. Similarly, a holder is not engaged in management participation as a result of undertaking or requiring an environmental investigation, and nothing in this rule should be understood to discourage a holder from undertaking or requiring such an environmental investigation in circumstances deemed appropriate by the holder. Because lender-conducted or required investigations of a borrower's business or collateral are information-gathering in nature, such activities cannot be considered to be management participation by a holder.

In the event that a pre-loan environmental investigation of an UST or UST system reveals contamination, the holder may undertake any one of a variety of responses that it deems appropriate: For example, the holder may refuse to extend credit or to follow through with the transaction or instead maintain indicia of ownership in other, non-contaminated property as protection for the security interest. Alternatively, a holder may determine that the risk of default is sufficiently slight (or that the extent of contamination is minimal and does not significantly affect the value of the UST or UST system as collateral) to proceed to extend credit and maintain indicia of ownership in the UST or UST system. Additionally, the holder may require the borrower to report and clean up the contamination as a condition for extending the loan. Such activities are not considered participation in the management of the UST or UST system or facility or property on which the UST or UST system is located, and a holder that knowingly takes a security interest in contaminated collateral is not subject to compliance with the RCRA Subtitle I corrective action regulatory program on that basis.

(2) Policing the security interest or loan. A holder may undertake actions that are consistent with holding ownership indicia primarily to protect a security interest which include, but are not limited to, a requirement that the borrower clean up a release from the UST or UST system which may have occurred prior to or during the life of the loan or security interest (as described in the last section); a requirement of assurance of the borrower's compliance with applicable federal, state, and local environmental or other laws and regulations during the life of the loan or security interest; securing authority or permission for the holder to periodically or regularly monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located, or the borrower's business or financial condition, or both; or to comply with legal requirements to which the holder is subject; or other requirements or conditions by which the holder is able to police adequately the loan or security interest, provided that the exercise by the holder of such other loan policing activities are not considered evidence of control over the operational aspects of UST or UST system or facility or property on which the UST or UST system is located.

The authority for the holder to take such actions may be contained in contractual (e.g., loan) documents or other relevant documents specifying requirements for financial, environmental, and other warranties, covenants, and representations or promises from the borrower. While the regulatory exemption in this rule requires that the actions undertaken by a holder in overseeing or managing the loan or other obligation be consistent with those of a person whose indicia of ownership in an UST or UST system (or facility or property on which an UST or UST system is located) is held primarily to protect a security interest, a holder is not expected to be an insurer or guarantor of environmental safety or quality at a secured UST or UST system. The inclusion of environmental warranties and covenants is not considered to be evidence of a holder's acting as an insurer or guarantor, and a finding of ''management participation'' cannot be premised on the existence of such terms or upon the holder's actions that ensure that the UST or UST system is managed in an environmentally sound manner. Since these actions are consistent with holding indicia of ownership primarily to protect a security interest, they are not considered to be participation in management in this rule.

(3) Loan work out. The holder may determine that actions need to be taken with respect to the UST or UST system to safeguard the security interest from loss. These actions may be necessary when, for example, a loan is in default or threat of default, and are commonly referred to as ''loan work out'' activities. ''Loan work out'' is largely an undefined term but is generally understood in the financial community to mean those activities undertaken to prevent, mitigate, or cure a default by the obligor or to preserve or prevent the diminution of the value of the security. Loan work out activities are recognized by EPA as a common lender undertaking and, as such, these actions will not take a holder outside of the scope of the security interest exemption provided that such actions do not include decisionmaking control over the day-to-day operation of the UST or UST system or facility or property on which the UST or UST system is located.

When the holder undertakes loan work out activities, provides financial or other advice, or similar support to a financially distressed borrower, the holder will remain within the scope of this security interest regulatory exemption only so long as the holder does not participate in management as defined herein under the section entitled ''Participating in Management.'' Loan work out actions that are not evidence of ''participation in management'' include, but are not limited to: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance with regard to the security interest; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions,

representations, or promises from the borrower.

(4) Foreclosure. In order to secure performance of an obligation, a holder often must take possession of an UST or UST system or facility or property on which an UST or UST system is located, as a result of a borrower's business failure and the subsequent foreclosure of the real property used to secure that obligation. The foreclosure process often results in the holder's taking record title or deed to the UST or UST system or facility or property on which an UST or UST system is located. Financial institutions and others who hold security interest exemptions are thereby justifiably concerned about the risks inherent in acquiring liability for compliance with the RCRA Subtitle I requirements for underground storage tanks.

EPA received several comments regarding the foreclosure process and the use of the term ''foreclosure or its equivalents'' in the proposed rule to trigger the date upon which several conditional measures were proposed to begin. Several commenters explained the linear fashion in which the foreclosure process generally works, indicating that no specific date could be tied to the term ''foreclosure'' by itself. EPA recognizes that since this rule places several time-related conditions upon a holder to enable it to avoid liability as an UST ''operator'' under the security interest exemption, it is incumbent upon the Agency to select a precise definition of the term ''foreclosure.'' On the other hand, as commenters suggested, there is no one best consistently used and practical step in the process that can be used as a date to define the end of the foreclosure process. EPA has taken all of these facts into consideration and determined that for purposes of this rule, ''foreclosure'' means that a legal, marketable or equitable title or deed has been issued, approved and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, facility and property on which the UST or UST system is located.

EPA acknowledges that the definition of ''foreclosure'' used in this rule describes only part of the process that is generally associated with the foreclosure process. In response to many comments, however, the concept of real property ''access'' has also been included in the definition. The definition used in this rule was selected to provide a point of reference for indicating the completion of the foreclosure process and point at which a holder could physically access any USTs or UST systems located on the property acquired through the foreclosure process.

Other components of the foreclosure process not referenced specifically in this rule's definition of foreclosure include: foreclosure judgment, foreclosure sale, purchase at foreclosure sale, acquisition or assignment of title in lieu of foreclosure, acquisition of a right to possession or title, or other agreement in settlement of the loan obligation, or any other formal or informal manner by which the holder acquires possession of the borrower's collateral for subsequent disposition in partial or full satisfaction of the underlying obligation. These actions associated with the foreclosure process are considered to fall within the scope of this regulatory exemption as necessary incidents to holding ownership indicia primarily to protect a security interest, so long as the holder's acquisition pursuant to foreclosure is reasonably necessary to ensure satisfaction or performance of the obligation, is temporary in nature, and occurs while the holder is actively seeking to sell or otherwise divest the foreclosed-on UST or UST system of facility or property on which the UST or UST system is located.

In general, under this rule, a foreclosing holder must, in order to maintain consistency with the security interest exemption, seek to sell or otherwise divest itself of foreclosed-on property in a reasonably expeditious manner using whatever commercially reasonable means are available or appropriate, taking all facts and circumstances into account. A holder cannot, under the terms of this rule, reject or refuse offers for the property that represent fair consideration for the asset and remain within the regulatory exemption. ''Fair consideration,'' for purposes of this rule, is equivalent to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or in the case of a lease financing transaction, possession of an UST or UST system or facility or property on which an UST or UST system is located) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). ''Fair consideration'' also includes all reasonable and necessary costs, debts, fees or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing the UST or UST system or facility or property on which the UST or UST system is located, prior to sale, release pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee) or other disposition, plus environmental compliance costs (such as tank emptying, upgrading, replacement, and removal, as well as site assessment and corrective action costs); less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower subsequent to the acquisition of full title (or possessions in the case of an UST or UST system subject to a lease financing transaction) pursuant to foreclosure. A holder that outbids or refuses offers from parties offering fair consideration for the property establishes that the property is no longer being held primarily to protect a security interest. The terms of the bid are relevant for this purpose, and a holder is not required to accept offers that would require it to breach duties owed to other holders, the borrower, or other persons with interests in the property that are owed a legal duty. In addition, the term ''fair consideration'' refers to an all cash offer, which is intended to ensure that this rule would not require a holder to accept a bid that contains unacceptable conditions, such as requirements for indemnification agreements, non-cash offers, ''bundled'' offers, etc. This provision should not be read to require that a holder may accept only cash offers, however; a holder is always free to accept any offer satisfactory to the holder. The exact requirement that would be imposed by this regulation is that a holder may not reject a cash offer of fair consideration for the foreclosed-on property. If it does, or if it outbids others offering fair consideration, then the holder would, under this rule, be considered to be an owner of the UST or UST system or facility or property on which the UST or UST system is located in the same manner as any other purchaser.

This rule's provisions defining ''fair consideration'' and specifying when the foreclosing holder may reject or outbid offers for the property were formulated to reflect the amount that the holder may bid at the foreclosure sale, or not reject during the foreclosure sale or thereafter, in order to recover on its loan or other obligation. In addition, there may be multiple security interests in a borrower's property held by secured creditors, which the definition of ''fair consideration'' must account for. Therefore, for a senior creditor, the term

''fair consideration'' means a cash amount that represents a value equal to or greater than the outstanding obligation owed to the holder (including the fees, penalties, and other charges incurred by the holder in connection with the property). ''Fair consideration'' further indicates that the amount that will recover the holder's ''security interest'' in the property may vary depending on the seniority of the loan or other obligation that is being foreclosed upon. Specifically, a junior creditor may be required to outbid senior creditors in order to recover the value of its loan or other obligation. The definition of fair consideration therefore distinguishes between what junior or senior creditors may bid or not reject for purposes of maintaining the exemption. In addition, in order to avoid liability under law (for example, to the borrower), the foreclosing holder may be required to seek an amount at the foreclosure sale that is greater than the outstanding obligation owed to the foreclosing holder, or to sell the property in a different manner; therefore, this rule does not require a holder to accept an offer of ''fair consideration'' if to do so would subject the holder to liability under federal or state law.

In this way the rule's provisions with respect to the sale or disposition of property will not conflict with the manner in which such sales are required to be conducted under general principles of law applicable to the holder and the disposition of the property including the UST or UST system. For purposes of this rule, the definition of ''fair consideration'' is an objective test to determine whether the foreclosing holder has an investment or other interest in the property that is not within the exemption, or whether the holder's post-foreclosure activities indicate that it continues to maintain its ownership indicia in the property primarily to protect a security interest, and is therefore within the protective ambit of this rule.

While a holder may use whatever means are reasonable and appropriate for marketing foreclosed-on property to establish that it is seeking to divest itself of property in an expeditious manner, EPA has established the following ''bright line'' test that a holder may choose to use to definitely establish that it continues to hold indicia of ownership primarily to protect a security interest, and is not an ''owner'' of foreclosed-on property for purposes of complying with the UST regulatory program. Under the ''bright line'' test a holder must, within 12 months following foreclosure (as defined herein under the section entitled ''Foreclosure''), list the property with a broker, dealer, or agent who deals with the type of property in question, or advertise the property as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the property in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located. If the holder satisfies these criteria, the holder is considered to have complied with the requirement in this rule that it is seeking to sell or otherwise divest the property in an expeditious manner. A holder choosing to avail itself of this bright line test will be able to provide clear and unambiguous evidence that it is not the UST or UST system's ''owner'' following foreclosure, for purposes of complying with the UST regulatory program.

EPA also recognizes that market conditions, the condition of the property, and other factors may mean that despite reasonable efforts to expeditiously sell or divest foreclosed-on property, the property may not be quickly sold. Therefore, this regulation does not impose a time requirement for the ultimate disposition of foreclosed-on property. Provided that the property is being actively offered for sale by the holder and no offers of fair consideration are ignored, outbid, or rejected, foreclosed-on property may continue to be held by the holder without the holder being considered an ''owner'' of the UST or UST system or facility or property on which the UST or UST system is located.

In the proposed rule, EPA proposed that in order for a holder to avoid losing the protection of the security interest exemption, the holder must act upon a written, *bona fide,* firm offer of fair consideration for the property within 90 days of receipt of the offer. A few commenters expressed a concern that 90 days would not provide a holder enough time to complete such a transaction in cases where the purchaser undertakes a site assessment before finalizing the transaction. The Agency has maintained the same language as that contained in the proposed rule, but wants to clarify that the requirement to ''act upon'' an offer does not mean that a purchase transaction must be completed with the 90-day time period. Rather, the holder must consider the offer, which may include, but is not limited to, responding to the offer and/or initiating a purchase transaction within 90 days. If at any time after six months following the acquisition of marketable title the holder outbids, rejects, or does not act upon within 90 days of receipt of, a written, *bona fide,* firm offer of fair consideration for the property, the holder will lose the protection of the rule. Under this rule, a ''written, *bona fide,* firm offer'' is a legally enforceable, commercially reasonable, offer, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. Where a holder outbids, rejects, or fails to act upon an offer of fair consideration, the holder is considered, for the purpose of this regulatory exemption, to be maintaining its indicia of ownership in the property as protection for investment purposes, and not as security for the obligation.

(5) Winding up operations after foreclosure. In addition, in the post-foreclosure context, this rule provides that a holder that forecloses on an UST or UST system with ongoing operations may wind up the UST or UST system's operations without also being considered to be participating in management. Winding up is considered a protected activity by a foreclosing holder because, without such protection, foreclosure would not be possible where practical or commercial necessity dictates that the foreclosing holder undertake such actions. ''Winding up'' in the post-foreclosure context includes those actions that are necessary to close down an UST or UST system's operations, secure the site, and otherwise protect the value of the foreclosed assets for subsequent sale or liquidation. In winding up an UST or UST system, a holder may undertake all necessary security measures or take other actions that protect and preserve an UST or UST system's assets, including steps taken to prevent or minimize the risk of a release or threat of release of the UST or UST system's contents.

F. Liability of a Holder as an Operator of an Underground Storage Tank or Underground Storage Tank System

While the Subtitle I security interest exemption excludes a holder from the definition of ''owner'' for regulatory compliance purposes, the statute does not explicitly address a holder's responsibilities as an UST or UST system ''operator.'' EPA recognizes that the absence of explicit language in the security interest exemption regarding a holder's responsibility for the Subtitle I requirements as an ''operator'' creates a potential problem for holders, since

EPA's UST regulations (as described in Section II of this preamble) apply to both owners and operators of underground storage tanks.

Some concern was expressed by commenters regarding the absence in the proposed rule of an outright exemption for holders from the definition of ''operator'' and the potential liability to which a holder could be exposed by engaging in any affirmative action in respect to an UST or UST system. EPA believes that Congress did not grant holders an outright exemption to the term ''operator'' in the Subtitle I security interest exemption because it may have wanted to ensure that holders did not engage in the day to day operations of the UST or UST system. The Agency believes this intent can be inferred from the statutory requirement that a holder may not ''participate in the management'' of the UST or UST system without voiding the exemption. EPA realizes that in order to provide meaning to the exemption, however, it is important to define how a holder can acquire title and access to an UST or UST system or facility or property on which an UST is located, and take affirmative actions to protect the value of their security interest, without losing the protection of the security interest exemption. Consequently, this regulation provides a road map that ensures that holders can utilize the security interest exemption, while reflecting the intent that exempted holders be prohibited from operating USTs or UST systems. The following sections discuss the actions that a holder can and cannot take to remain within the protective ambit of the regulatory security interest exemption.

1. Pre-Foreclosure Operation

Prior to foreclosure, it is the borrower, not the holder, who generally is in control of, or has responsibility for, the daily operation of an UST or UST system, and is subject to the full range of requirements applicable to operators of USTs. During this time period, a holder is permitted to conduct those activities related to its financial and administrative obligations of managing a loan portfolio, as well as environmental compliance activities and activities undertaken voluntarily to protect human health and the environment in compliance with 40 CFR part 280. The holder in this position will not lose its ability to take advantage of this regulatory exemption as a result of engaging in these activities. If the holder becomes engaged in the daily operation of an UST or UST system, however, it becomes subject to the full range of requirements applicable to operators of USTs or UST systems.

2. Post-Foreclosure Operation

Once a holder has foreclosed on an UST or UST system or facility or property on which the UST or UST system is located, it displaces the borrower and could become engaged in the day-to-day operation of an UST or UST system merely by storing product in the UST or UST system. EPA considers an UST to be in use and in operation if petroleum is added to, dispensed from, or stored in the UST. Therefore, except as provided in this rule, a holder cannot continue to use, store, dispense, or fill petroleum in an UST or UST system after obtaining marketable title and access to the UST or UST system or facility or property on which the UST or UST system is located without incurring Subtitle I liability (unless there is another operator available, as described later in this section). That does not mean, however, that a holder is barred from taking affirmative actions to ensure that a tank is no longer in use, by demonstrating that the tank is no longer storing, dispensing or being filled with petroleum. The holder best demonstrates this by emptying tanks it acquires through the foreclosure process. Thus, in order to qualify for the exemption, it is essential for a holder to empty all tanks that it knows about or should know about shortly after undertaking foreclosure (the time period following foreclosure is discussed later in this section), unless there is another operator who takes responsibility for complying with 40 CFR part 280 (as described later in this section). An UST or UST system is empty—in accordance with § 280.70—when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight, of the total capacity of the UST system, remain in the system. Stated simply, this means that all product must be removed from the UST or UST system so that only one inch of residue remains. To ensure that the UST system has been adequately secured, vent lines must be left open and functioning, and all other lines, pumps, manways, and ancillary equipment must be capped and secured (§ 280.70).

Several commenters expressed concern about a blanket requirement for holders to discontinue operation of an UST or UST system upon acquisition of the UST or UST system through foreclosure, particularly if a lessee or other tenant was present at the site. In response to these commenters concerns, EPA believes that tanks can remain in use if there is someone who is available to take responsibility as an operator for compliance with the Subtitle I requirements. There may be situations, for example, when a lessee is willing to continue operating an UST or UST system as the ''operator,'' in compliance with Subtitle I, while a holder is in possession of the UST or UST system or facility or property on which the UST is located. In some instances, the holder may want to arrange for a different person to operate the UST or UST system, for example, when the existing lease expires. In those cases where an operator (other than the holder) exists who is in control of and has responsibility for the daily operation of the UST, and who can be held responsible for compliance with 40 CFR part 280 requirements, the holder would not be considered the operator. Under these circumstances it is not necessary, in order to retain the security interest exemption, for a holder to empty the tanks for which it is knowledgeable about upon foreclosure, or to empty tanks that it becomes knowledgeable of later. (The issue of known and unknown tanks is discussed later in this section.)

In foreclosure, to avoid being an ''operator'' of the UST, in addition to emptying and securing the UST or UST system, a holder must also comply with the Subtitle I requirements for either temporary or permanent closure, in order to retain the security interest exemption. A holder who chooses to permanently close its UST or UST system, must do so in accordance with §§ 280.71 through 280.74, Subpart G—Out of Service UST Systems and Closure, except the holder is not required to perform corrective action if contamination is discovered. A holder who chooses to temporarily close its tanks is required to maintain corrosion protection and report any known or suspected releases from the UST system. In accordance with § 280.70(a), release detection is not required as long as the UST system is empty. A foreclosing holder who fails to satisfy the conditions established in this rule for retaining the security interest exemption could be an ''operator'' under the Subtitle I regulations and would therefore be subject to the full panoply of Subtitle I regulatory obligations applicable to all operators of tanks, including the corrective action regulations.

a. Costs of post-foreclosure temporary closure conditions. A few commenters expressed concern that the costs associated with the proposed rule's post-foreclosure conditions to empty tanks and enter temporary closure

would prevent lenders from making UST-related loans. EPA does not believe that the costs associated with performing these actions are significant, compared to the cost of alternatives that holders would otherwise face.

First, in the absence of this regulatory exemption, as an ''operator'' upon foreclosure, a holder would have to comply with the UST technical standards in some manner. Entering temporary closure is one way to comply with the UST technical standards. The only condition placed upon a holder by this rule that differs from what normally constitutes temporary closure under the technical standards is the requirement for emptying tanks. The estimated total cost of emptying one tank and draining the associated pipes is $950. $350 of this cost is attributed to the mobilization of a truck for fuel disposal, which remains a fixed price per site. The total estimated cost per four-tank facility is $2750 ($600 per tank, plus $350 for the truck). The total cost for securing the lines is estimated at $225 per facility. These costs could be as much as the cost for release detection for tanks that a holder does not empty and that remain in use, estimated at up to $2800 for a four-tank facility. Under the requirements in 40 CFR § 280.70 for temporary closure, an owner or operator is allowed to either empty and secure its tanks, or perform release detection. While this regulatory exemption restricts a holder's choice to emptying and securing its tanks, no new costs are imposed upon the holder, since without this rule, the holder would have to pay approximately the same cost, whether it chose to empty its tanks or maintain release detection. For further information regarding the costs of emptying tanks and securing lines, please see the ''Background Document in Support of the Lender Liability Rule for Underground Storage Tanks Under Subtitle I of the Resource Conservation and Recovery Act'' located in the UST Docket at 401 M Street, SW., room 2616, Washington, DC 20460.

b. Time frame for emptying USTs and securing UST systems EPA received the most comments regarding the period of time allowed to demonstrate that a holder is no longer storing product, and thereby no longer operating an UST or UST system. All but one person who commented on the 15-day time frame in the proposed rule maintained that 15 days was not enough time to empty tanks and complete temporary closure after foreclosure. EPA proposed 15 days originally because our research indicated that only seven days should be necessary to empty the tanks and secure the lines at an UST facility once a contractor had been selected. Another seven days was added to provide time for the holder to become familiar with the details of this regulatory exemption and identify a qualified contractor. The Agency is obliged by the regulatory authority under section 9003(b), 42 U.S.C. 6991b(b) of Subtitle I to promulgate regulations based not only upon the technical capability of owners and operators, but also upon what is necessary to protect human health and the environment. It is therefore incumbent upon the Agency to select the shortest time period needed by a holder to empty tanks and secure lines.

Commenters listed a variety of reasons why more time would be needed for emptying tanks, including: special problems associated with rural communities such as long distances—travel time and locating a qualified contractor; snow, ice and other inclement weather conditions (thick snow and/or ice can make tanks difficult or impossible to detect and empty during winter months); contracting delays related to difficulties in locating, scheduling and negotiating a price with a contractor, and in some cases, in obtaining various bids; banks' (especially small banks') unfamiliarity with EPA regulations; multiple tanks at large facilities; laboratory testing requirements imposed by some states; and finding alternative storage arrangements, especially for non-marketers. Government agencies, acting in a receivership capacity, could face special difficulties due to protracted contract bidding requirements. Recommendations proposed by commenters, due to these various delays, ranged from 30 to 140 days.

Based on these commenters' concerns and information that they provided, the Agency has concluded that 60 calendar days is a reasonable, minimum period of time after undergoing foreclosure, as that term is defined under section III. C. 5. of this preamble, to allow a holder to empty its known tanks (see discussion of unknown tanks later in this section). This decision is based upon the following estimated time frame developed from information received by commenters: approximately one week to become familiar with Subtitle I and the details of this regulatory exemption, and to locate all USTs and the extent of the UST system on the foreclosed property; 5 weeks to complete a contractor bidding process and hire a qualified contractor, perform laboratory tests if necessary (accounting for travel time and weather delays), and apply for and obtain approval for content disposal if required by the state; two weeks to schedule contractor and for contractor to perform and complete work related to emptying all USTs and securing the UST system (accounting for travel time, other commitments and weather delays).

EPA also recognizes that the time needed for a holder to empty its tanks and secure its UST system may vary based upon the holder's geographic location. Extreme weather conditions in areas such as Alaska, special problems associated with rural communities, and additional requirements imposed by some states, may pose special problems for holders attempting to empty tanks in an expeditious manner. Thus, holders in some states may need more than 60 days to empty their tanks and secure their UST systems. Therefore, EPA believes that the implementing agency should have the ability to select a time frame that it finds most appropriate for holders, either based upon individual holders' needs (case-by-case determination), or based upon a standard time frame for all holders under the jurisdiction of that implementing agency. Thus, a holder who wishes to take advantage of this regulatory exemption, must empty its known tanks within 60 days after foreclosure or within 60 days after the effective date of this rule, whichever is later, or within another reasonable timeframe as specified by the implementing agency.

c. Unknown Tanks. Many commenters noted that a holder may not know of the existence of an UST when, through foreclosure, it acquires title to an UST or UST system or facility or property on which an UST or UST system is located. Several examples were provided by commenters demonstrating the problems associated with identifying all the USTs that may be located on a property it acquires. Among the examples, commenters stated that USTs may not be registered with the state, or it may be difficult for a holder to know of the existence of an UST on agricultural property or on other non-fuel-marketer properties. Sometimes the borrower does not disclose the existence of any USTs or the exact number and location of the USTs. Even if the holder is aware that USTs may be located on the property, it may encounter difficulty in identifying the USTs' exact locations. This could be especially difficult when a site is covered with snow or ice during the winter. Furthermore, USTs are sometimes hidden under asphalt or even under buildings. Performing an environmental assessment or audit is no guarantee that USTs will be found. As one commenter asserted, even a phase II

site assessment could fail to indicate the presence of USTs.

Several commenters urged EPA to adopt a more practical approach to emptying tanks that may not be discovered by the holder until after the 60-day time period following foreclosure. EPA believes that unless a holder is allowed to empty a tank upon discovering it, rather than potentially losing the protection of the regulatory security interest exemption if it fails to identify and empty all its tanks within 60 days after foreclosure, holders will remain suspicious of extending credit to UST owners and operators, undermining the purpose of this rule. Therefore, a holder can remain within the protective ambit of this rule by emptying an unknown UST within 60 days after discovering it or within 60 days after the effective date of this rule, whichever is later, or within another timeframe as specified by the implementing agency.

d. Permanent closure. A number of commenters objected to EPA's proposal pertaining to holders who had not disposed of the UST or UST system or facility or property on which the UST or UST system is located, within 12 months after foreclosure. The Agency proposed that in order for these holders to maintain the regulatory exemption, they must either enter permanent closure if they failed to dispose of the UST or UST system 12 months after foreclosure, or perform a site assessment and apply for an extension of temporary closure from the implementing agency. Several commenters doubted that they would be able to sell properties with USTs within 12 months. They argued that permanent closure would be burdensome and unnecessary to protect human health and the environment, since the requirement to empty the UST would eliminate the threat of contamination from further releases from the UST.

Commenters also insisted that holders do not possess the technical capacity of the average UST owner or operator, so they should not have to enter permanent closure to retain the exemption. Furthermore, commenters did not believe that it was appropriate for a holder, who acts as a temporary custodian of the UST or UST system, to decide the ultimate fate of a facility (whether to take the tanks permanently out of operation). Rather, they asserted, that decision should be left up to the subsequent purchaser. As one commenter stated, total closure could severely hinder a holder's selling opportunities and eventually remove the property from the mainstream of commerce. Although the proposed rule offered holders the option of applying for an extension of temporary closure from the implementing agency, some states prohibit such extensions, which would leave holders in those states without any option other than permanent closure of the tanks.

EPA agrees with commenters that the decision regarding whether or not a tank should be permanently closed should generally be left with whoever purchases the UST or UST system or facility or property on which the UST is located from the holder. The Agency has concluded that USTs that are emptied, secured and placed in temporary closure for the temporary period of time for which they are possessed by a holder should not need to be permanently removed or permanently closed in place in order to protect human health and the environment. Therefore, in this final rule, a holder may retain the regulatory exemption by temporarily closing but not permanently closing its USTs and UST systems. However, if a holder is unable to dispose of an UST property within 12 months, it must conduct a site assessment if the USTs are older and do not meet new tank performance standards (discussed later in this section). EPA believes that it is important for a holder to conduct such an assessment in order for the implementing agency to determine if there is any contamination on the site, and if so, make a determination regarding the potential amount of risk posed to human health and the environment and whether that risk warrants the implementing agency taking corrective action. (While this rule precludes a holder's liability for corrective action costs if the holder retains its eligibility for the exemption as provided in the rule, the implementing agency can undertake corrective action measures on the holder's site based upon its assessment of the risks posed by any contamination identified there.) As in the case of other temporarily closed tanks, in order to maintain protection of human health and the environment, contamination should not be allowed to remain unidentified for more than 12 months after an UST or UST system has been taken out of service (or in this case, more than 12 months after foreclosure, as that term is defined under § 280.210(c) of this rule). For purposes of this provision, the 12-month period begins to run from the effective date of the rule or from the date on which the UST or UST system is emptied and secured, whichever is later.

The Agency does not consider the site assessment condition to be unduly burdensome for several reasons. First, a holder will only need to perform a site assessment if the USTs that the holder has acquired have not been upgraded or replaced to meet the requirements of § 280.20 for new UST systems or § 280.21 for upgraded systems, or if no external release detection method is in operation. Many of a holder's USTs should be upgraded or replaced since many of the loans that UST owners and operators are requesting are expected to be used for upgrading or replacing substandard tanks. Furthermore, after 1998, all tanks are required to be upgraded or replaced, so holders should encounter few substandard USTs after that time. A site assessment can also be averted if one of the external release detection methods allowed in § 280.43 (e) or (f) is operating at the end of the 12-month period, and the release detection method operating indicates that no release has occurred.

The Agency is also aware that conducting a site assessment during property transfers has become a standard business practice and that few property transactions currently take place without one. If a holder should have to bear the cost of performing a site assessment, that cost may in some cases be passed on to the subsequent purchaser, and in some states, the holder may be reimbursed for the cost of performing a site assessment through the state's petroleum assurance fund or through other assistance programs. While EPA cannot require states to pay or reimburse a holder for performing a site assessment (or for undertaking any other actions that would protect the environment, such as corrective action), the Agency encourages states to provide assistance to holders who wish to engage in environmental compliance activities or voluntary environmental actions in order to protect their security interest.

3. Release Reporting Requirements Following Foreclosure

Under today's rule, upon foreclosure, a holder taking advantage of the regulatory exemption from corrective action regulations must nevertheless comply with the requirement in § 280.50 that the discovery of any releases from the UST be reported to the implementing agency. Only the reporting requirement must be followed; the holder need not comply with § 280.52, despite the reference to that provision in § 280.50. The release reporting requirement of § 280.50 is part of Subpart E, which details the obligations for reporting known or suspected releases, investigating off-site impacts, confirming that a release has occurred, and cleaning up spills and

overfills. While Subpart E generally implements Subtitle I's corrective action and site investigation requirements, from which a holder may be excluded under today's rule, § 280.50 has historically been viewed by EPA as part of the UST technical standards.

A holder is responsible, following foreclosure, for reporting to the implementing agency, any discovery of released regulated substances, or any suspected release at an UST site or in the surrounding area. Such reporting is considered necessary to ensure protection of human health and the environment. By the holder's informing the implementing agency of a release, the implementing agency can then determine the appropriate response action, if any.

In the absence of today's rule a holder, as an UST operator, would have to perform release investigation and confirmation in accordance with §§ 280.51 through 280.53. Under today's rule, a holder who chooses to take the tank(s) out of service as described in this rule is required to follow the procedures established in § 280.50 but is not subject to the release investigation and confirmation requirements in §§ 280.51 through 280.53. A holder who elects to keep the tank(s) in operation, however, is obligated to comply with all of the Subpart E requirements, including those related to release investigation and confirmation, and corrective action.

G. Financial Responsibility Requirements

RCRA § 9003(c), as implemented by EPA at 40 CFR Part 280 Subpart H—Financial Responsibility, requires owners or operators of petroleum USTs to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental UST releases. As discussed earlier under Section III. A. of this preamble, EPA is defining, for purposes of its Subtitle I corrective action and technical requirements, the term ''owner'' to mean that a holder who maintains ownership rights in an UST or UST system primarily to protect a security interest does not rise to the level of a full ''owner,'' and therefore is not subject to compliance with those regulatory requirements. As described earlier, this approach to EPA's regulatory program is consistent with the Subtitle I statutory security interest exemption. Similarly, a holder is not subject to the financial responsibility requirements as an UST owner.

The Agency is also exempting a holder as an UST ''operator'' from the financial responsibility requirements, provided the holder satisfies the conditions contained in this rule. Before a holder takes possession of an UST or UST system, a holder is not considered an UST operator, for purposes of EPA's technical and financial responsibility regulations, if it is acting merely as a holder and is not in control of the daily operation of the UST or UST system. Therefore, a holder typically is not subject to the UST financial responsibility requirements of 40 CFR Part 280 Subpart H as an operator prior to foreclosure.

Under this rule a holder is exempted from corrective action as an operator after foreclosure if it ensures that its tanks no longer store petroleum and it complies with the temporary or permanent closure requirements specified in this rule. (See Section III. F. 2. of this preamble). In these situations, where the holder is not liable for corrective action and where the tanks are empty and pose little threat of release, it would serve no useful purpose to require a holder to demonstrate compliance with the financial responsibility requirements for corrective action. Therefore, the Agency is exempting holders who satisfy all the other requirements in this rule from demonstrating Subtitle I financial responsibility for UST corrective action.

A holder's responsibility for demonstrating UST financial responsibility for third-party bodily injury and property damage compensation poses a different issue. While RCRA Subtitle I does not include provisions that actually impose third-party liability upon UST owners and operators, it does require UST owners and operators to demonstrate their ability to compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of an UST or UST system. The Agency believes that a holder who complies with all the conditions set forth in today's rule should not be required to comply with any of the UST financial responsibility requirements as an owner or operator, including those for both corrective action and third-party liability coverage. This regulatory exemption is consistent with the interpretation of that language adopted in the preamble to the UST financial responsibility final rule (53 FR at 43323). In that rule, EPA exempted tanks taken out of operation prior to the effective date of the rule from UST financial responsibility compliance. In the preamble to the final rule, EPA recognized that ''insurance providers would be extremely reluctant to assure tanks taken out of operation because of the perceived greater uncertainty associated with them'' (53 FR at 43327). In particular, insurers have indicated that in the case of foreclosed USTs, they would be concerned about vandalism and other threats to USTs at non-operational, unattended gas stations or similar locations with public access. The preamble also states that ''even if providers of assurance would assure these tanks, it is unlikely that they would cover leaks which occurred before the effective date of the policy'' (53 FR at 43327).

A similar situation exists for holders who empty their tanks and enter temporary or permanent closure after foreclosure. EPA has discovered that it is practically impossible to obtain third-party environmental insurance coverage for a new owner of empty tanks. Providers of financial assurance are reluctant to provide any coverage for tanks that no longer store petroleum product. Further, providers are reluctant to provide coverage for damages that occur after the effective date of the policy for releases that might have occurred prior to the effective date of the policy. Under this rule a holder is required to empty its tanks in order to be exempt from corrective action regulatory requirements. Since providers are unlikely to provide any coverage for empty tanks at non-operational facilities or for releases that occurred prior to foreclosure, and since third-party damages would be extremely unlikely to stem from releases occurring after the holder forecloses on and empties its tanks, the Agency believes it is unnecessary to require third-party liability coverage for such tanks.

RCRA § 9003(c)(6) supports this regulatory exemption. That provision emphasizes the connection between the UST financial responsibility requirement and a tank's operational status: ''The regulations promulgated pursuant to this section shall include: * * * (6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.'' [emphasis added.] The Agency believes that since a holder must demonstrate that its tanks are empty and that it is complying with the UST temporary or permanent closure requirements in order to avoid corrective action liability as an operator, there should be no need for a holder who meets these requirements to demonstrate financial responsibility for corrective action or third-party damages. By requiring the holder to empty the

tank in order to be exempt from corrective action requirements, EPA is ensuring that damages caused by future releases from that tank will be minimized if not avoided altogether. As a result, holders who act in accordance with the requirements described in this rule are exempt from all Subtitle I financial responsibility requirements.

H. State Implementation and State Program Approval

EPA received numerous comments regarding the problems associated with the absence of lender liability provisions in many states, as well as the problems generated by the variety of state UST lender liability provisions that currently exist. Some commenters argued that the only way to make today's rule effective would be for EPA to require states to enact state legislation regarding UST lender liability. Other commenters specifically addressed state program approval requirements and state clean up funds. In general, the comments indicate that several misconceptions exist regarding the role of state programs in implementing Subtitle I, the state program approval process and state clean up funds.

First, as many commenters pointed out, today's rule only affects federal UST requirements, and only provides an eligible holder protection against federal enforcement actions. Since the UST program is implemented primarily through the states under state laws, a holder can be afforded protection against UST liability at the state level only if the state has enacted its own lender liability legislation, regulations, or policies.

Several states have already enacted laws or regulations containing UST lender liability provisions. In many states without existing lender liability provisions, state legislatures are debating lender liability bills. While EPA can encourage states to enact UST lender liability provisions, the Agency does not have the authority to require that states adopt such provisions. Therefore, the Agency strongly urges those states without security interest exemptions to enact legislation similar to what is included in today's Federal rule. EPA believes that such action is crucial in the effort to increase the availability of capital to UST owners and operators.

Several comments submitted to EPA addressed state program approval and whether or not states could broaden protections for holders. A state's lender liability legislation or regulations may affect the state's program approval and states need to be cognizant of that relationship when considering the enactment of a security interest exemption.

UST state program approval, as provided for under RCRA Subtitle I § 9004, and as implemented by 40 CFR part 281, provides states the ability to operate an UST regulatory program in lieu of the federal program if they first submit the program for review and receive approval from EPA. EPA approval of a state program means that the requirements in the state's laws and regulations will be in effect rather than the federal requirements. Program approval ensures that a single set of requirements (the state's) will be enforced in that state, thus eliminating the duplication and confusion that can result from having separate state and federal requirements. EPA considers state program approval to be an integral part of the UST regulatory program.

EPA's approval review focuses primarily on the basic state authorities (laws and regulations) needed to achieve the underlying objectives of the federal regulations covering the UST technical standards, corrective action, and financial responsibility requirements. The UST state program approval process is also based upon a performance-oriented approach. The statutory test for an approvable state program is that it be ''no less stringent'' than the federal requirements and include as many categories of UST systems (or be as broad in scope) as the federal requirements. EPA reviews the state's specific statutory and regulatory provisions as well as their interpretation by the Attorney General of the state.

Enactment of lender liability legislation or regulations is not a requirement for receiving or maintaining state program approval. A state program without a security interest exemption is acceptable under EPA's state program approval requirements, since failure to have such a provision would not narrow the scope of the state program, nor render it ''less stringent'' than the federal program. However, in order to fully effectuate the purpose of today's rule in expanding capital opportunities to UST owners and operators, EPA recommends that states act promptly to enact secured creditor provisions.

If a state program includes an UST security interest exemption, EPA will evaluate it against the criteria in § 281.39 of this rule. A state program that exempts a holder from UST requirements as an owner and operator may be approved if: The holder is maintaining indicia of ownership primarily to protect a security interest in a petroleum UST or UST system; the holder does not participate in the management or operation of the UST or UST system; and the holder does not engage in petroleum production, refining, and marketing. The state's program application should address the issue of UST lender liability in the ''Scope'' section of its state program description, under § 281.21 of the State Program Approval regulations.

A state may encounter program approval conflicts if it enacts a lender liability provision that is broader in scope or less stringent than today's federal lender liability rule. However, this rule should not present a barrier for states to receive state program approval. The program approval requirements contained in this rule are intended to provide enough flexibility to allow states to enact various UST lender liability provisions without jeopardizing their ability to receive or maintain approval of their state program.

I. Holders' Access to State Funds

EPA received several comments regarding a holder's ability to apply for state cleanup funding to remediate an UST property acquired through foreclosure. Some commenters also expressed concern about a holder's ability to access other state assistance programs intended for UST owners and operators. While the EPA cannot require states to ensure that holders are included among those eligible for a state's cleanup fund, reinsurance program, loan or grant program, today's rule is not intended to prohibit or discourage states from allowing holders access to these programs.

A few commenters highlighted the confusion that exists regarding the association between EPA's financial responsibility requirements and the state cleanup funds. EPA believes that it is important for holders to understand the purpose of state cleanup funds, the relationship between EPA and these state funds, and the relationship between the financial responsibility requirements and state cleanup funds.

As described earlier under section II. C. of this preamble, the financial responsibility requirements were promulgated to ensure that UST owners and operators demonstrated their ability to pay the costs of conducting remediation and compensating third parties for injuries or damages due to UST contamination. There are an array of acceptable financial responsibility compliance mechanisms, including insurance, guarantees, letters of credit, surety bonds, fully-funded trust funds and state assurance funds. State assurance or cleanup funds have become the most common and low cost financial responsibility compliance

mechanism for tank owners and operators. As described earlier in this preamble under section III. G., holders who are eligible for today's regulatory security interest exemption are not responsible for demonstrating financial assurance. However, as noted by commenters, many holders would like to obtain access to state cleanup funds to voluntarily remediate any contamination that might be located on an UST property they obtain through foreclosure in order to protect human health and the environment, and make the property more attractive to potential purchasers. Some commenters were concerned that the proposed lender liability rule would have the unintended effect of blocking such access.

State cleanup funds have been established in many states to assist UST owners and operators in performing corrective action. States may apply to EPA for approval of its cleanup fund as a financial assurance mechanism. States are not, however, required by law or regulation to establish a cleanup fund or any other state UST assistance program, or to submit the fund to EPA for approval.

Each state fully controls how its fund functions. No two state cleanup funds are identical; they vary in the amounts and types of coverage provided, in their eligibility requirements, in the amount of funding, funding source, method of payment, and program implementation. EPA's understanding is that currently, holders are eligible to apply for state cleanup fund monies in some states and not in others. That situation will likely continue upon promulgation of this rule, as this rule is not intended to alter the eligibility of holders to apply for state cleanup fund monies. While EPA cannot require that states provide holders access to these funds, EPA encourages states to recognize the benefits associated with remediating UST properties held by holders in terms of increased protection of human health and the environment, and the enhanced ability to return these properties to productive use.

J. Outstanding Loans and Loans in Foreclosure Upon the Effective Date of the Rule

In the proposed rule, EPA requested comments regarding how the potential liability associated with a holder's current holdings acquired through foreclosure could affect the extension of future UST-related loans. Many commenters expressed their concern that financial institutions would be unwilling to extend loans to properties containing USTs if those institutions incurred significant costs in relation to properties on which they had already foreclosed. Several commenters also insisted that the Subtitle I security interest exemption was not intended by Congress to be contingent upon EPA's exercise of its rulemaking authority. These commenters noted that a rule that does not include a holder's current UST holdings would effectively void the secured creditor exemption that has been part of RCRA since 1986, thereby denying holders the protection that Congress provided in the law. Commenters also expressed concern that failure to include in the exemption a holder's outstanding loans in foreclosure would create the need for a cumbersome recordkeeping system, in which holders would have to keep track of whether foreclosures occurred prior to or after the effective date of the rule. Commenters also indicated that enforcement would be hampered unless states began requiring holders to report the date on which foreclosures occur, as defined under § 280.210(c). They stated that such a reporting requirement would add an additional burden on security interest holders, not intended by Congress' statutory exemption for security interest holders.

In addition, several commenters mentioned the benefits that would be afforded the environment by including outstanding loans within the exemption's protective ambit. For example, commenters stated that holders would be encouraged to empty USTs and undertake voluntary cleanups on currently foreclosed properties containing USTs if such properties were included in the rule.

Based on the comments received, EPA has concluded that there is sufficient evidence to indicate that the intent of the rule in expanding credit opportunities for UST owners and operators would be undermined if the rule does not cover holders of existing security interests and holders of security interests already in foreclosure upon the effective date of the rule. Furthermore, such protection for holders could provide additional environmental benefits; by encouraging holders in foreclosure at the time the rule is issued to empty their tanks, contamination will be curtailed at numerous UST sites throughout the country. Therefore, holders of existing as well as future security interests, including those in foreclosure upon the effective date of this rule, fall within the rule's protective ambit as long as the holder satisfies the conditions contained in this rule for the regulatory security interest exemption.

IV. Issues Outside the Scope of This Rule

A. Petroleum Producers, Refiners, and Marketers

Several commenters requested that the security interest exemption be expanded to cover petroleum producers, refiners, and marketers who hold indicia of ownership primarily to protect a security interest. They claimed that a petroleum marketer who extends loans to UST owners is no different than a financial institution that extends loans to UST owners, except that a marketer's experience in the petroleum industry helps it avoid unsound practices that lead to foreclosures. Commenters further stated that these ''petroleum marketer-creditors'' supply loans to many small businesses that cannot get loans elsewhere, and that without an exemption for petroleum producers, refiners, and marketers, capital from these sources would dry up.

The statutory exemption for security interest holders in Subtitle I specifically excludes petroleum producers, refiners, and marketers. Since the Subtitle I security interest exemption excludes petroleum producers, refiners, and marketers, the Agency has not extended the regulatory exemption to these persons.

EPA disagrees with commenters who stated that small businesses will be harmed by today's rule. To the contrary, the Agency expects this regulatory exemption to increase the total amount of capital available to small businesses, who are currently most in need of capital for UST improvements. Financial institutions, currently reluctant to make UST-related loans to small businesses should, as a result of this rule, greatly increase the total availability of capital for UST owners who are otherwise credit worthy.

Although holders who engage in petroleum production, refining, and marketing are not covered by this regulatory exemption, they should not expect to automatically be held liable for cleaning up contamination caused by a borrower. Under the federal UST regulations, such a holder would need to meet the regulatory definition of either ''owner'' or ''operator'' of the UST in order to be potentially liable for contamination caused by the UST. A determination as to whether or not a holder who engages in petroleum production, refining, and marketing is responsible for UST cleanup costs as an owner or operator will be based on the individual circumstances of the case, as has been the situation in the past. Thus, this rule does not affect the current liability scheme for holders who also

engage in petroleum production, refining, and marketing. As a result, EPA does not believe that capital from these sources will ''dry up'' as some commenters stated.

A few commenters were confused about the effect of the rule upon a holder's ability to extend capital to or foreclose on an UST property that was used by a borrower to produce, refine, or market petroleum. EPA believes that the restriction in the statutory security interest exemption was intended to prevent petroleum producers, refiners, and marketers from personally employing the exemption. Thus, the restriction in the exemption allows holders who do not engage in petroleum production, refining, and marketing to hold a security interest in an UST or UST system for a borrower who engages in these areas of business.

B. Third Party Liability

Several commenters addressed the issue of a holder's protection from third party actions. In general, these commenters requested that the final rule provide protection for holders from UST litigation initiated by private parties (i.e., private legal actions not involving the United States government). Since RCRA Subtitle I does not impose liability pertaining to third parties, EPA has not addressed third party liability in this rule. Third parties who wish to recover UST regulatory compliance and corrective action response costs may have a cause of action against holders under various provisions of federal and state law, other than Subtitle I of RCRA.

While this rule cannot offer protection for holders from every conceivable type of liability related to UST contamination on properties held by holders to protect a security interest, it specifies the types of activities that holders may engage in while remaining within the protective ambit of the Subtitle I security interest exemption. In so doing, it provides certainty for holders whose primary concern is fear of being held liable by the federal government under relevant UST statutes and regulations—not third-party actions.

C. Trustee and Fiduciary Liability Under Subtitle I

EPA received a number of comments requesting that the security interest exemption be expanded to cover trustees and fiduciaries acting in a fiduciary capacity. Commenters stressed the importance of providing the trust operations of a financial institution protection from RCRA Subtitle I liability. They expressed concern that the financial institution or individual financial officer acting as a trustee or fiduciary could face personal liability under RCRA Subtitle I if any or all of a trust's assets are contaminated by an UST release. Commenters asserted that they should not be held personally liable for the cleanup of trust properties because prior to their appointment as trustee or fiduciary they would have no way of knowing whether the trust's property was contaminated, nor would they have been able to have prevented the contamination. They maintained that protection for all areas of a financial institution's operations was crucial to stimulate more credit for small businesses to upgrade and improve their UST systems. Commenters further stated that a large environmental expense on the trust side of a financial institution would have a significant, negative effect upon UST-related lending on the commercial side.

EPA carefully considered the comments received regarding this issue, but has not provided the specific relief requested by commenters. Since the primary purpose of this rule is to expand the availability of capital to UST owners by encouraging lenders to make loans to credit-worthy UST owners, it is appropriate for EPA to provide an exemption for holders of security interests on UST-related loans. The Agency is not convinced, however, that it is necessary to extend the exemption to other persons, such as trustees, who, in their capacity as trustee, are not involved in making UST-related loans to tank owners.

The Agency believes that in most instances, however, the liability of a trustee may be limited by the operation of existing trust law. While acknowledging the complexities of trust law as well as numerous jurisdictional variations, EPA believes the concepts described in the Restatement (Second) of Trusts (1959)[4] provide a fair representation of the common law of trusts, and generally would be applicable to trusts involving underground storage tanks.

Under the well-established and generally accepted principles governing the obligations of trusts and the liability of trustees, as articulated in the Restatement, the trustee is technically personally responsible for the liability: ''The trustee is subject to personal liability to third persons on obligations incurred in the administration of the trust to the same extent that he would be liable if he held the property free of trust.'' Restatement (Second) of Trusts § 261. However, the rule of personal liability is tempered by a right to indemnification: ''The Trustee is entitled to indemnity out of the trust estate for expenses properly incurred by him in the administration of the trust.'' *ID.* § 244. Accordingly, the rule is that ordinarily the trustee may obtain indemnification from the trust assets for the acts within his or her official capacity. Thus, EPA believes that in most instances, a trust's assets would be available for cleanup of trust property contaminated by USTs.

D. Hazardous Substance Tanks

Several commenters noted that hazardous substance UST systems are regulated under Subtitle I, and indicated that the rule would be more useful if holders would not have to concern themselves with determining which USTs contained petroleum and which contained other substances. They requested that the rule also apply to USTs storing hazardous substances. Such a rule, reasoned one commenter, would better reflect the actual property inspection and examination process that holders undertake with respect to their collateral.

Today's regulatory exemption does not apply to non-petroleum, hazardous substance USTs or UST systems regulated under Subtitle I. The primary reasons for this are, first, the security interest exemption appears in one specific section of RCRA Subtitle I, titled EPA Response Program for Petroleum (see RCRA section 9003(h)). As the title indicates, the security interest provision applies to petroleum USTs and UST systems. Second, the primary purpose of this rule is to expand capital availability for small business petroleum UST owners and operators, particularly petroleum retailers. The Agency believes that a rule pertaining exclusively to petroleum USTs and UST systems will address the needs of this particular group of tank owners and operators.

E. Hazardous Waste Tanks

As explained under section III of this preamble, the RCRA Subtitle I security interest exemption specifically applies to USTs that are regulated under Subtitle I and that are used to contain an accumulation of petroleum. A few commenters requested that EPA expand the exemption to include tanks storing hazardous waste as well.

Today's rule only addresses petroleum USTs regulated under Subtitle I of RCRA. Hazardous waste is regulated under Subtitle C of RCRA. Section 9001(2)(A) of Subtitle I explicitly excludes USTs containing

[4] The Restatement (Second) of Trusts (1959) is an authoritative summary of the law of trusts prepared by the American Law Institute. Although the Restatement is not codified into law, it is frequently used as a guide to interpretation by courts.

hazardous waste from regulation under Subtitle I. EPA derives its authority to develop today's rule in part from section 9003(h) of Subtitle I of RCRA—EPA Response Program for Petroleum. This authority applies exclusively to Subtitle I USTs and does not extend to the regulation of hazardous waste under Subtitle C. Thus, today's rule applies exclusively to EPA's RCRA Subtitle I UST program and does not affect any environmental requirements outside of the Subtitle I regulatory context.

F. Aboveground Storage Tanks and Heating Oil Tanks

A few commenters requested that in addition to petroleum USTs, the proposed regulatory exemption apply to aboveground storage tanks (ASTs) and heating oil tanks. Neither ASTs nor tanks used to store heating oil for consumptive use on the premises where stored are regulated under RCRA Subtitle I, although they may be regulated sometimes under other federal laws (e.g., the Oil Pollution Act) or state laws. Today's rule only addresses petroleum USTs regulated under Subtitle I of RCRA. The rule applies exclusively to EPA's RCRA Subtitle I UST program and does not affect any environmental requirements outside of the Subtitle I regulatory context.

While ASTs and heating oil tanks used for on-site consumption are excluded from the federal UST requirements, several states do regulate them. Under federal law, states are allowed to develop more stringent requirements, as well as requirements that are broader in scope than federal the ones. Thus, holders may find themselves responsible for certain state-imposed AST and/or heating oil tank requirements. States that are concerned about lender liability issues may choose to provide statutory and regulatory exclusions for holders that extend loans to borrowers who own or operate ASTs or heating oil tanks, particularly if it would have a positive influence on the ability of an UST owner or operator to obtain capital.

V. Economic Analysis

In the proposed rule, EPA requested that commenters furnish information that would help the Agency better understand how this regulatory exemption would affect an UST owner or operator's ability to comply with UST regulations. The Agency specifically requested information regarding the current interest rate charged for loans when property with one or more USTs is used as collateral. In addition, holders were asked about the extent to which credit might have been more available in the past if the rule had been in effect.

EPA did not receive any substantive comments or data regarding this request for information, and as a result, was unable to collect and analyze any new data that would assist the Agency in quantitatively evaluating further the rule's potential effects upon environmental protection and economic growth. For those interested in a more detailed discussion of the costs and benefits associated with today's rule, please refer to the ''Background Document in Support of the Lender Liability Rule for Underground Storage Tanks Under Subtitle I of the Resource Conservation and Recovery Act,'' located in the OUST Docket at 401 M Street, SW., room M2616, Washington, DC 20460.

VI. 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 U.S. Office of Management and Budget (OMB) 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises unique or novel policy issues. Therefore, this rule is subject to review by OMB. OMB, however, elected to waive its review of the final rule. Thus, no changes were made in the final rule in response to OMB recommendations.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, agencies must evaluate the effects of a regulation on small entities. If the rule is likely to have a ''significant impact on a substantial number of small entities,'' then a Regulatory Flexibility Analysis must be performed. Because this rule may actually result in cost savings for small entities that hold security interests in USTs or UST systems, by lowering the cost and increasing the availability of capital for small business UST owners, EPA certifies that today's rule would not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

This rule does not contain any new information collection requirements under the provision of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

To the extent that this rule discusses any information collection requirements imposed under existing underground storage tank regulations, those requirements have been approved by the OMB under the Paperwork Reduction Act and have been assigned control number 2050–0068 (ICR no. 1360.04).

D. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of 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 impacted by the rule.

EPA has determined that this rule 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.

List of Subjects in 40 CFR Parts 280 and 281

Hazardous substances, Insurance, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

Dated: August 29, 1995.

Carol M. Browner,

Administrator.

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

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 is revised to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, 6991g, 6991h.

2. Part 280 is amended by adding subpart I consisting of §§ 280.200 through 280.240 to read as follows:

Subpart I—Lender Liability

Sec.

Subpart I—Lender Liability

§ 280.200 Definitions.

(a) *UST technical standards,* as used in this subpart, refers to the UST preventative and operating requirements under 40 CFR part 280, subparts B, C, D, G, and § 280.50 of subpart E.

(b) *Petroleum production, refining, and marketing.*

(1) *Petroleum production* means the production of crude oil or other forms of petroleum (as defined in § 280.12) as well as the production of petroleum products from purchased materials.

(2) *Petroleum refining* means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) *Petroleum marketing* means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) *Indicia of ownership* means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter ''lease financing transaction''), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) *A holder* is a person who, upon the effective date of this regulation or in the future, maintains indicia of ownership (as defined in § 280.200(c)) primarily to protect a security interest (as defined in § 280.200(f)(1)) in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) *A borrower, debtor, or obligor* is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) *Primarily to protect a security interest* means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) *Security interest* means an interest in a petroleum UST or UST system or in the facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(2) *Primarily to protect a security interest,* as used in this subpart, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) *Operation* means, for purposes of this subpart, the use, storage, filling, or dispensing of petroleum contained in an UST or UST system.

§ 280.210 Participation in management.

The term ''participating in the management of an UST or UST system'' means that, subsequent to the effective date of this subpart, December 6, 1995, the holder is engaging in decisionmaking control of, or activities related to, operation of the UST or UST system, as defined herein.

(a) Actions that are participation in management.

(1) Participation in the management of an UST or UST system means, for purposes of this subpart, actual participation by the holder in the management or control of decisionmaking related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in the management of the UST or UST system only if the holder either:

(i) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or

(ii) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise,

or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 USC 6991c and 40 CFR part 281.

(b) Actions that are not participation in management pre-foreclosure.

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subpart. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subpart. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(i) Policing the security interest or loan.

(A) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in § 280.210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(B) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with 40 CFR part 280, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in § 280.210(a) and § 280.230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

(ii) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in § 280.210(a). For purposes of this rule, ''work out'' refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure. (i) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subpart, the term ''foreclosure'' means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in § 280.210(a)) prior to or after foreclosure.

(ii) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious

manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in § 280.210(c)(2). A holder that outbids, rejects, or fails to act upon a written *bona fide*, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in § 280.210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subpart.

(i) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the 12-month period begins to run from December 6, 1995 or from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the 12-month period begins to run from December 6, 1995 or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(ii) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(A) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and corrective action costs incurred under §§ 280.51 through 280.67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph.

(B) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, *bona fide*, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in § 280.210(c). A ''written, *bona fide*, firm offer'' means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from December 6, 1995 or from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder was acting diligently to acquire marketable title or

deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from December 6, 1995 or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under 40 CFR part 280, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in § 280.210(a) and § 280.230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

§ 280.220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.

Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an ''owner'' of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the UST technical standards as defined in § 280.200(a), the UST corrective action requirements under §§ 280.51 through 280.67, and the UST financial responsibility requirements under §§ 280.90 through 280.111, provided the person:

(a) Does not participate in the management of the UST or UST system as defined in § 280.210; and

(b) Does not engage in petroleum production, refining, and marketing as defined in § 280.200(b).

§ 280.230 Operating an underground storage tank or underground storage tank system.

(a) Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in § 280.210(c), is not an ''operator'' of a petroleum UST or UST system for purposes of compliance with the UST technical standards as defined in § 280.200(a), the UST corrective action requirements under §§ 280.51 through 280.67, and the UST financial responsibility requirements under §§ 280.90 through 280.111, provided that, after December 6, 1995, the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in § 280.210(c), acquires a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located.

(1) A holder is not an ''operator'' of a petroleum UST or UST system for purposes of compliance with 40 CFR part 280 if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281.

(2) If another operator does not exist, as provided for under paragraph (b)(1) of this section, a holder is not an ''operator'' of the UST or UST system, for purposes of compliance with the UST technical standards as defined in § 280.200(a), the UST corrective action requirements under §§ 280.51 through 280.67, and the UST financial responsibility requirements under §§ 280.90 through 280.111, provided that the holder:

(i) Empties all of its known USTs and UST systems within 60 calendar days after foreclosure or within 60 calendar days after December 6, 1995, whichever is later, or another reasonable time period specified by the implementing agency, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and

(ii) Empties those USTs and UST systems that are discovered after foreclosure within 60 calendar days after discovery or within 60 calendar days after December 6, 1995, whichever is later, or another reasonable time period specified by the implementing agency, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(3) If another operator does not exist, as provided for under paragraph (b)(1) of this section, in addition to satisfying the conditions under paragraph (b)(2) of this section, the holder must either:

(i) Permanently close the UST or UST system in accordance with §§ 280.71 through 280.74, except § 280.72(b); or

(ii) Temporarily close the UST or UST system in accordance with the following applicable provisions of § 280.70:

(A) Continue operation and maintenance of corrosion protection in accordance with § 280.31;

(B) Report suspected releases to the implementing agency; and

(C) Conduct a site assessment in accordance with § 280.72(a) if the UST system is temporarily closed for more than 12 months and the UST system does not meet either the performance standards in § 280.20 for new UST systems or the upgrading requirements in § 280.21, except that the spill and overfill equipment requirements do not have to be met. The holder must report any suspected releases to the implementing agency. For purposes of this provision, the 12-month period begins to run from December 6, 1995 or from the date on which the UST system is emptied and secured under paragraph (b)(2) of this section, whichever is later.

(4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in 40 CFR part 280 or applicable state requirements in

those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281.

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 281 is revised to read as follows:

Authority: 42 U.S.C. 6912, 6991 (c), (d), (e), (g).

Subpart C—[Amended]

2. Section 281.39 is added to subpart C to read as follows:

§ 281.39 Lender liability.

(a) A state program that contains a security interest exemption will be considered to be no less stringent than, and as broad in scope as, the federal program provided that the state's exemption:

(1) Mirrors the security interest exemption provided for in 40 CFR part 280, subpart I; or

(2) Achieves the same effect as provided by the following key criteria:

(i) A holder, meaning a person who maintains indicia of ownership primarily to protect a security interest in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located, who does not participate in the management of the UST or UST system as defined under § 280.210 of this chapter, and who does not engage in petroleum production, refining, and marketing as defined under § 280.200(b) of this chapter is not:

(A) An ''owner'' of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the requirements of 40 CFR part 280; or

(B) An ''operator'' of a petroleum UST or UST system for purposes of compliance with the requirements of 40 CFR part 280, provided the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(ii) [Reserved]

(b) [Reserved]

[FR Doc. 95–21982 Filed 9–6–95; 8:45 am]

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Federal Register

Thursday
September 7, 1995

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 864, et al.

Medical Devices; Effective Date of Requirement for Premarket Approval for Class III Preamendments Devices; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 864, 868, 870, 872, 876, 880, 882, 884, 888, and 890

[Docket No. 95N–0084]

RIN 0910–AA31

Medical Devices; Effective Date of Requirement for Premarket Approval for Class III Preamendments Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for 43 class III medical devices. The agency also is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. In addition, FDA is announcing the opportunity for interested persons to request the agency to change the classification of any of the devices based on new information.

DATES: Written comments by January 5, 1996; request for a change in classification by September 22, 1995. FDA intends that, if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

ADDRESSES: Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as ''preamendments devices.''

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

Section 515(b)(2)(A) of the act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device under section 513 of the act, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the class III devices that are the subjects of this regulation.

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that ''the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket

approval.'' (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976).)

The Safe Medical Devices Act of 1990 (Pub. L. 101–629) (SMDA) added new section 515(i) to the act (21 U.S.C. 360e(i)). This section requires FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and to determine whether each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. However, the SMDA does not prevent FDA from proceeding immediately to rulemaking under section 515(b) of the act on specific devices, in the interest of public health, independent of the procedures in section 515(i). Indeed, proceeding directly to rulemaking under section 515(b) of the act is consistent with Congress' objective in enacting section 515(i) i.e., that preamendments class III devices for which PMA's have not been required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of any of the devices.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy document set forth FDA's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into three groups:

1. Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness but are no longer used or are very limited in use. FDA's strategy is to call for PMA's for all Group 1 devices in an omnibus 515(b) rulemaking action. This proposed rule implements that strategy and covers all Group 1 devices referenced by the May 6, 1994, **Federal Register** notice.

2. Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. For these devices, FDA has issued an order under section 515(i) of the act requiring manufacturers to submit safety and effectiveness information so that FDA can make a determination as to whether the devices should be reclassified.

3. Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA intends to issue proposed rules to require the submission of PMA's for the 15 highest priority devices in this group in accordance with the schedule set forth in the strategy document. FDA has also issued an order under section 515(i) of the act for the remaining 27 Group 3 devices requiring the submission of safety and effectiveness information so that FDA can make a determination as to whether the devices should be reclassified or retained in class III.

A. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for class III devices within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, the agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that ''* * * the continued availability of the device is necessary for the public health.''

FDA intends that, under § 812.2(d) (21 CFR 812.2(d)), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for a class III device is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule to avoid interrupting investigations.

B. Proposed Finding With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the advisory committees (panels) for the classification of these devices along with any additional information that FDA discovers. Additional information can be found in the proposed and final rules classifying these devices as listed below:

Devices	Proposed rule	Final rule
Hematology/ Pathology (21 CFR part 864).	September 11, 1979 (44 FR 52950).	September 12, 1980 (45 FR 60576
Anesthesiology 1982 (21 CFR part 868).	November 2, 1979 (44 FR 63292).	July 16, (47 FR 31130)
Cardiovascular (21 CFR part 870).	March 9, 1979 (44 FR 13284).	February 5, 1980 (45 FR 7904)
Dental (21 CFR part 872).	December 30, 198 (45 FR 85962).	August 12, 1987 (52 FR 30082)
Gastroenterology-Urology (21 CFR part 876).	January 23, 1981 (46 FR 7562).	November 23, 1983 (48 FR 53012)
General Hospital and Personal Use (21 CFR part 880).	August 24, 1979 (44 FR 49844).	October 21, 1980 (45 FR 69678)
Neurological (21 CFR part 882).	November 28, 1978 (43 FR 55640).	September 4, 1979 (44 FR 51726)
Obstetrical and Gynecological.	April 3, 1979(44 FR 19894).	February 26, 1980 (45 FR 12682)

Devices	Proposed rule	Final rule
Orthopedic (21 CFR part 888).	July 2, 1982 (47 FR 29052).	September 4, 1987 (52 FR 33686)
Physical Medicine (21 CFR part 890).	August 28, 1979 (44 FR 50458).	November 23, 1983 (48 FR 53032)

C. Devices Subject to This Proposal

1. Hematology and Pathology Devices

Automated Differential Cell Counter (§ 864.5220)

(1) *Identification*. An automated differential cell counter is a device used to identify and classify one or more of the formed elements of the blood. The device is in class III when intended for uses other than to flag or identify specimens containing abnormal blood cells. Otherwise, the device is in class II.

(2) *Summary of data*. The members of the Hematology and Pathology Devices Classification Panel based their recommendation upon the Panel members' clinical experience with automated differential cell counters and on information presented at a symposium entitled ''Differential Counters in Hematology'' held at the Panel meeting. Among the speakers at the symposium was Dr. Robert Miller of the Johns Hopkins University Medical Center. Dr. Miller discussed difficulties concerning data interpretation, precision and accuracy, correlation to reference methods and error in terms of coincidence, nonreproducible results, nonlinearity, and specific interferences.

FDA has reviewed medical literature concerning automated differential cell counters (Refs. 1 through 5). The medical literature reports two basic methodologies for automated differential cell counting: Pattern recognition and flow-through techniques. Pattern recognition systems microscopically scan a fixed, stained blood film. Flow-through systems count and identify cells suspended in a liquid medium.

Pattern recognition systems are handicapped by their lack of accuracy (Ref. 1). In one study, 68.8 percent of the abnormal cells that the system examined were classified as normal (Ref. 2). An error of this sort could result in the failure to detect a pathological blood sample (Ref. 1). Several studies (Refs. 3 through 5) show a discrepancy between pattern recognition counts and manual counts of monocytes (mononuclear leukocytes). It is suggested that the criteria for identifying monocytes need to be better defined (Ref. 4). There also have been reports of discrepancies between pattern recognition counts and manual counts of plasma cells and atypical lymphocytes (Ref. 4). The tendency of pattern recognition systems to underestimate the number of atypical lymphocytes is ascribed to flaws in the recognition criteria. Pattern recognition systems also cause difficulty in blood film preparation. Overlapping cells must be avoided, and a uniform distribution of cell types must be achieved (Ref. 1).

Flow-through systems allow a hundredfold increase in the rate at which cells are counted. There is imperfect correlation between the classification logic systems of the flow-through machines and morphological features of the blood cell classes as defined by fixed, Romanowsky-stained preparations (Ref. 1). Therefore, these machines will fail to classify up to 10 percent of normal cells.

The device was the subject of a reclassification petition and was partially reclassified into class II for the uses listed above. The proposed rule for reclassification was published in the **Federal Register** of April 5, 1989 (54 FR 13698) and the final rule was published in the **Federal Register** of June 8, 1990 (55 FR 23510).

(3) *Risks to health*.

- Hepatitis infection—Exposure of the user, donor, or patient to blood, blood products, or blood aerosols presents a risk of hepatitis infection. HIV was unknown in 1979 when the device was classified and is also an important risk.
- Misdiagnosis and inappropriate therapy—Failure of the device to perform satisfactorily may lead to an error in the diagnosis of a blood cell disorder. Inappropriate therapy based on inaccurate diagnostic data may place the patient at risk.

2. Anesthesiology Devices

Electroanesthesia Apparatus (§ 868.5400)

(1) *Identification*. An electroanesthesia apparatus is a device used for the induction and maintenance of anesthesia during surgical procedures by means of an alternating or pulsed electric current that is passed through electrodes fixed to the patient's head.

(2) *Summary of data*. The Anesthesiology Devices Classification Panel and the Neurological Devices Classification Panel recommended that electroanesthesia apparatus be classified into class III (premarket approval) because the device presents a potential unreasonable risk of illness or injury to the patient. The Anesthesiology Devices Classification Panel based its recommendation on the insufficient number of domestic studies on human subjects. The Panel had not seen any medical data on which to judge the safety and effectiveness of the device, and believed that the technique of electroanesthesia is not considered a well-established or well-recognized clinical procedure. The Neurological Devices Classification Panel noted that many factors important to the clinical application of this technique have not been sufficiently defined. The Neurological Devices Classification Panel also based its recommendation on the Panel members' experience with the device, and their judgment and knowledge of the pertinent literature (Ref. 6). The National Research Council recommended that electroanesthesia should be considered as a potentially useful adjunct in the maintenance of anesthesia but that electroanesthesia should be limited to investigational use until its effects, advantages, and standardization can be adequately evaluated.

(3) *Risks to health*.

- Electrical shock—Improper electrical grounding may allow the patient or operator to receive an electrical shock.
- Damage to central nervous system—Excessively high electrical current or voltage could damage the central nervous system and cerebral tissues.
- Skin burns—If the electrodes are too small and yield a high current density, skin burns may result.
- Skin irritation—Electrode gels or pastes used to establish electrical contact between the electrode and the skin may cause skin irritation.
- Cardiac or pulmonary interference—The position of the electrode on the head may lead to electrical interference with cardiac or pulmonary functions in the patient.

3. Cardiovascular Devices

Catheter Balloon Repair Kit (§ 870.1350)

(1) *Identification*. A catheter balloon repair kit is a device used to repair or replace the balloon of a balloon catheter. The kit contains the materials, such as glue and balloons, necessary to effect the repair or replacement.

(2) *Summary of data*. The members of the Cardiovascular Devices Classification Panel based their recommendation on the potential hazards associated with the inherent properties of the device and on their personal knowledge of, and experience with, the device. The Panel was not aware of any published literature on this device.

(3) *Risks to health.*

• Gas embolism—Balloon rupture caused by the repair material or a leak in the repair material can allow potentially debilitating or fatal gas emboli to escape into the bloodstream.

• Embolism—Pieces of the balloon that break or flake off may form potentially debilitating or fatal emboli.

• Thromboembolism—Inadequate blood compatibility of the materials used in this device and inadequate surface finish and cleanliness can lead to potentially debilitating or fatal thromboemboli.

• Cardiac arrhythmias—Toxic substances released from the repair material (glue or other adhesive) can trigger cardiac arrhythmias (irregularities in heart rhythm).

Trace Microsphere (§ 870.1360)

(1) *Identification.* A trace microsphere is a radioactively tagged nonbiodegradable particle that is intended to be injected into an artery or vein and trapped in the capillary bed for the purpose of studying blood flood within or to an organ.

(2) *Summary of data.* The Panel members based their recommendation on the potential hazards associated with the inherent properties of the device and on their personal knowledge of, and experience with, the device.

(3) *Risks to health.*

• Thromboembolism—Inadequate blood compatibility of the materials used in the device may lead to potentially debilitating or fatal thromboemboli.

• Embolism—If the microspheres are too large or tend to clump together, they can lodge in a blood vessel and block the flow of blood to an organ.

• Tissue damage—Tissue damage can result from excessive radioactivity of the particles.

Carotid Sinus Nerve Stimulator (§ 870.3850)

(1) *Identification.* A carotid sinus nerve stimulator is an implantable device used to decrease arterial pressure by stimulating Hering's nerve at the carotid sinus.

(2) *Summary of data.* The Panel members based their recommendation on the potential hazards associated with the inherent properties of the device and on their personal knowledge of, and experience with, the device.

(3) *Risks to health.*

• Tissue and blood damage—If the materials, surface finish, or cleanliness of this device are inadequate, damage to the blood and tissue may result.

• Inability to control blood pressure—Failure of the device to stimulate properly can prevent effective control of elevated blood pressure.

High-Energy DC-Defibrillator (Including Paddles) (§ 870.5300)

(1) *Identification.* A high-energy DC-defibrillator is a device that delivers into a 50-ohm test load an electrical shock of greater than 360 joules of energy used for defibrillating the atria or ventricles of the heart or to terminate other cardiac arrhythmias. The device may either synchronize the shock with the proper phase of the electrocardiogram or may operate asynchronously. The device delivers the electrical shock through paddles placed either directly across the heart or on the surface of the body.

(2) *Summary of data.* The Panel relied upon the potential hazards associated with the inherent properties of the device and on the Panel members' personal knowledge of, and experience with, the device. In addition, the Panel sought information from the medical and scientific community, industry, and medical literature (Refs. 20 through 25).

(3) *Risks to health.*

• Electrical shock to operator—Improper electrical design of the device can lead to a serious electrical shock to the operator.

• Inability to defibrillate or persistence of the arrhythmia—Inability to rhythmia may occur because of excessive energy, excessive current, insufficient energy, insufficient current, a difference between the indicated level of energy and the delivered into a 50-ohm load, or excessive leakage current.

• Inability to defibrillate—Inability to defibrillate may occur when certain drugs that can raise the defibrillation threshold are used.

• Inability to defibrillate due to paddle design—Inability to defibrillate may result from inappropriate paddle size or inappropriate paddle location on the subject.

4. Dental Devices

Karaya and Sodium Borate With or Without Acacia Denture Adhesive (§ 872.3400)

(1) *Identification.* A karaya with sodium borate with or without acacia denture adhesive is a device composed of karaya and sodium borate with or without acacia intended to be applied to the base of a denture before the denture is inserted into the patient's mouth. The device is used to improve denture retention and comfort. If it contains 12 percent or more by weight of sodium borate, it is in class III; otherwise it is in class I.

(2) *Summary of data.* The members of the Dental Devices Classification Panel relied upon their personal knowledge of, and clinical experience with, the device in the practice of dentistry and on a report from the then-Bureau of Drugs' OTC Panel on Dentifrices and Dental Care Agents (Ref. 26). This report states that there is a lack of information concerning the safety of adhesives containing sodium borate and a lack of information concerning the effectiveness of acacia in denture adhesives. The report states that the sodium borate concentration of 12 to 20 percent of the adhesive's total weight is equivalent to 2.6 to 5.3 percent boron. Because at least a portion of a denture adhesive is ingested, this amount of boron could cause chronic toxicity in denture wearers (Ref. 27). The Panel agrees that there is a lack of data concerning the safety and effectiveness of acacia and karaya with sodium borate.

(3) *Risks to health.*

• Chronic toxicity—The boron in this device may cause chronic toxicity to users.

• Adverse tissue reaction—If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Carboxymethylcellulose Sodium and Cationic Polyacrylamide Polymer Denture Adhesive (§ 872.3420)

(1) *Identification.* A carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive is a device composed of carboxymethylcellulose sodium and cationic polyacrylamide polymer intended to be applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(2) *Summary of data.* The Panel based its recommendation on the lack of information available to demonstrate the effectiveness of carboxymethylcellulose sodium and cationic polyacrylamide in dental adhesives and on a report of the then-Bureau of Drugs' OTC Panel on Dentifrices and Dental Care Agents. According to the report, the belief that carboxymethylcellulose sodium is safe is based, in part, on its widespread use in food products such as milk and ice cream (Ref. 28). Tests of cationic polyacrylamide for acute oral toxicity, eye irritation, and dermal and inhalation toxicity in subacute and chronic feeding experiments in animals have been negative (Ref. 26). Human patch tests also have been negative (Ref. 28). However, no data were submitted to the Panel to demonstrate, and the literature did not establish, the effectiveness of carboxymethylcellulose

sodium cationic polyacrylamide polymer as a denture adhesive.

(3) *Risks to health.*

• Bone loss from lack of effectiveness—If the adhesive fails to anchor the denture in its proper position, a change in the distance between the upper and lower jaws may occur that may lead to gum irritation and bone loss due to alteration of biting forces.

• Adverse tissue reaction—if the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Polyacrylamide Polymer (Modified Cationic Denture Adhesive (§ 872.3480)

(1) *Identification.* A polyacrylamide polymer (modified cationic) denture adhesive is a device composed of polyacrylamide polymer (modified cationic) intended to be applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, this device, and on a report of the then-Bureau of Drugs' OTC Panel on Dentifrices and Dental Care Agents. Tests of polyacrylamide polymer (modified cationic) for acute oral toxicity, eye irritation, and dermal and inhalation toxicity in subacute and chronic feeding experiments in animals have been negative (Ref. 26). Human patch tests also have been negative (Ref. 28). However, no data were submitted to the Panel to demonstrate, and the literature did not establish, the effectiveness of polyacrylamide polymer as the sole ingredient of a denture adhesive.

(3) *Risks to health.*

• Bone loss—If the adhesive fails to anchor the denture in its proper position, and the distance between the upper and lower jaw is changed, then bone loss and gum irritation may occur.

• Adverse tissue reaction—If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Polyvinylmethylether Maleic Anhydride (PVM–MA), Acid Copolymer, and Carboxymethylcellulose Sodium (NACMC) Denture Adhesive (§ 872.3500)

(1) *Identification.* Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive is a device composed of polyvinylmethylether maleic anhydride, acid copolymer, and carboxymethylcellulose sodium intended to be applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(2) *Summary of data.* The Panel based it recommendation on the Panel members' personal knowledge of, and clinical experience with the device and on a report of the then-Bureau of Drugs' OTC Panel on Dentifrices and Dental Care Agents. The report states that sufficient data are not available to demonstrate the safety and effectiveness of a combination of PVM—MA and NACMC used as a denture adhesive (Ref. 26). The Panel also based its recommendation on a publication by Blacow (Ref. 27), which states that the pH and stability of the anhydride and diacid forms may be hazardous due to the possible presence of an acid pH of 2 to 3, which can burn the tissues in the mouth.

(3) *Risks to health.*

• Toxicity—Ingestion of the materials in this device may cause chronic toxicity to users.

• Adverse tissue reaction—If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction. Acidity of the adhesive may burn tissues in the mouth.

Over-the-Counter (OTC) Denture Reliner (§ 872.3560)

(1) *Identification.* An OTC denture reliner is a device consisting of a material such as plastic resin that is intended to be applied as a permanent coating or lining on the base or tissue-contacting surface of a denture. The device is intended to replace a worn denture lining and may be available for purchase over the counter.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The Panel also based its recommendation on statements that further studies are necessary to determine the safety and effectiveness of this device (Ref. 26).

(3) *Risks to health.*

• Bone degeneration—Use of the device may cause alteration in the vertical dimension of a denture and result in bone degeneration in the upper and lower jaw.

• Carcinomas—Long-term irritation or oral tissues caused by incorrect vertical dimension may cause formation of carcinomas.

Root Canal Filling Resin (§ 872.3820)

(1) *Identification.* A root canal filling resin is a device composed of material, such as methylmethacrylate, intended for use during endodontic therapy to fill the root canal of a tooth. If chloroform is used as an ingredient in the device, the device is in class III. Otherwise, it is in class I.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, root canal filling resins in the practice of dentistry.

(3) *Risks to health.* FDA believes that root canal fillings containing chloroform present a risk of carcinogenicity.

5. Gastroenterology-Urology Devices

Colonic Irrigation System (§ 876.5220)

(1) *Identification.* A colonic irrigation system is a device intended to instill water into the colon through a nozzle inserted into the rectum to cleanse (evacuate) the contents of the lower colon. The system is designed to allow evacuation of the contents of the colon during the administration of the colonic irrigation. The device consists of a container for fluid connected to the nozzle via tubing and includes a system which enables the pressure, temperature, or flow of water through the nozzle to be controlled. The device may include a console-type toilet and necessary fittings to allow the device to be connected to water and sewer pipes. The device may use electrical power to heat the water. This device does not include the enema kit (§ 876.5210). When the device is intended for colon cleansing when medically indicated, such as before radiologic or endoscopic examinations, it is in class II. When the device is intended for other uses, including colon cleansing routinely for general well being, it is in class III.

(2) *Summary of data.* The members of the Gastroenterology-Urology Devices Classification Panel based their recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

(3) *Risks to health.*

• Tissue burns—The temperature-regulating mechanism for the water heater used in this device may allow overheating of the water which is delivered to the patient's colon, resulting in tissue burns.

• Perforation of the colon—Excessive water pressure delivered by this device could result in perforation of the wall of the colon.

• Colon irritation—Excessive or inappropriate use of this device may result in irritation of the colon.

• Electrical injury—Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or operator.

Implanted Electrical Urinary Continence Device (§ 876.5270)

(1) *Identification.* An implanted electrical urinary continence device is a device intended for treatment of urinary incontinence that consists of a receiver implanted in the abdomen with electrodes for pulsed-stimulation that are implanted either in the bladder wall or in the pelvic floor, and a battery-powered transmitter outside the body.

(2) *Summary of data.* The Panel based its recommendation on a review of the historical data concerning implanted electrical urinary continence devices. Halverstadt and Parry (Ref. 29) discussed several unsolved problems inherent in the electrical stimulation of the bladder. These problems include breakage of lead wires, the cumbersome nature of the electrodes, risk of preformation by wires of the bladder cavity, difficulty of obtaining uniform contraction of the detrusor muscle, and the spread of the stimulus to neighboring tissues producing abdominal pain. The Panel also based its recommendation on the experimental nature of these devices and on the lack of adequate medical literature and experience supporting their safety and effectiveness.

(3) *Risks to health.*

• Adverse tissue reaction and erosion—Defects in the design or the construction of the device, or lack of biocompatibility of the materials used in the device, may cause an adverse tissue reaction and tissue erosion adjacent to the device.

• Infection—Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.

• Tissue damage—Defects in the electrode wires may lead to their breakage and consequent tissue damage.

• Abdominal and leg pain—The amount of stimulation by the electrodes necessary to obtain adequate bladder stimulation may lead to abdominal and leg pain.

• Electrical injury—Improper design, construction, or malfunction of the device could result in electrical injury to the patient or the operator.

6. General Hospital and Personal Use Devices

Chemical Cold Pack Snakebite Kit (§ 880.5760)

(1) *Identification.* A chemical cold pack snakebite kit is a device consisting of a chemical cold pack and tourniquet used for first-aid treatment of snakebites.

(2) *Summary of data.* The members of the General Hospital and Personal Use Devices Classification Panel based their recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on several articles in the literature that evaluate different types of treatment for snakebites (Refs. 30, 31, and 32). Most of the literature showed that cryotherapy (the use of cold therapy for the treatment of snakebites) is inappropriate. Clement and Pietrusko found high rates of amputation, local tissue destruction, and prolonged disability in patients treated by this method (Ref. 30). A National Academy of Sciences report stated that doubts about the safety and effectiveness of short-term cold therapy for treatment of snakebites have not been resolved (Ref. 31). The report also stated that the use of cold therapy for a long period of time appears to be dangerous. Watt reported that, among children who had to have amputations because of snakebites, 75 percent had received cryotherapy for the snakebites (Ref. 32).

(3) *Risks to health.*

• Local tissue damage—Exposure of tissue to cold temperatures for long periods of time can freeze the tissue and cause local tissue damage, sometimes necessitating limb amputations.

7. Neurological Devices

Rheoencephalograph (§ 882.1825)

(1) *Identification.* A rheoencephalograph is a device used to estimate a patient's cerebral circulation (blood flow in the brain) by electrical impedance methods with direct electrical connections to the scalp or neck area.

(2) *Summary of data.* The members of the Neurological Devices Classification Panel referenced the literature on this device (Refs. 43 through 46). Some of the panel members witnessed its clinical application. Dr. William Jarzembski, one of the Panel members, provided some detailed information concerning his research on this device.

(3) *Risks to health.*

• Erroneous clinical conclusions—The device may indicate that cerebral circulation is normal, when in fact it may be very abnormal.

• Electrical shock—Excessive current could cause injury, and malfunction of the device could result in an electrical shock.

• Skin reaction—The electrode materials and conductive media may irritate the skin.

Intravascular Occluding Catheter (§ 882.5150)

(1) *Identification.* An intravascular occluding catheter is a catheter with an inflatable or detachable balloon tip that is used to block a blood vessel to treat malformations, e.g., aneurysms (balloonlike sacs formed on blood vessels) of intracranial blood vessels.

(2) *Summary of data.* The Panel members based their recommendation on the lack of data available on this device. Although the Panel members were aware of the use of this device in investigational programs, they believed that there is not enough information or data to demonstrate that its safety and effectiveness can be adequately controlled by means other than premarket approval.

(3) *Risks to health.*

• Infarction of nervous tissue—If the catheter is not controllable or if the balloon or tip should fail or unexpectedly come loose from the catheter, use of the device may cause infarction of nervous tissue (death of nervous tissue due to stoppage of circulation) and other serious injury to the brain and other nervous tissue.

• Hemorrhage—The catheter or improper balloon inflation may injure a blood vessel and result in bleeding.

• Thrombogenesis—Blood coagulation and clotting may result if the material of which the catheter is constructed is not compatible with blood.

Implanted Spinal Cord Stimulator for Bladder Evacuation (§ 882.5850)

(1) *Identification.* An implanted spinal cord stimulator for bladder evacuation is an electrical stimulator used to empty the bladder of a paraplegic patient who has a complete transection of the spinal cord and who is unable to empty his or her bladder by reflex means or by the intermittent use of catheters. The stimulator consists of an implanted receiver with electrodes that are placed on the conus medullaris portion of the patient's spinal cord and an external transmitter for transmitting the stimulating pulses across the patient's skin to the implanted receiver.

(2) *Summary of data.* The Panel members based their recommendation on information supplied by Dr. Blaine Nashold, one of the Panel members, who had been one of the primary individuals engaged in the development of the device (Ref. 37). Dr. Nashold reported that he had implanted the device in a small group of paraplegic patients. Six of the 12 patients had been successfully emptying their bladders by this method for 5 years (Ref. 37).

(3) *Risks to health.*

• Injury to neural tissue—Tissue fibrosis may develop around the electrode on the spinal cord and cause a diminished response to the electrical stimulus.

• Tissue toxicity—The implanted stimulator, lead wires, or electrodes may contain material that is not biocompatible.

• Cerebrospinal fluid leakage—The fluid that surrounds the spinal cord might leak out around the receiver wires.

8. Obstetrical and Gynecological Devices

Obstetric Data Analyzer (§ 884.2050)

(1) *Identification.* An obstetric data analyzer is a device designed to interpret fetal status during labor and to warn of possible fetal distress by analyzing electronic signal data obtained from fetal or maternal electronic or other monitors. This generic type of device includes signal analysis and display equipment, electronic interfaces for other equipment, and power supplies and component parts.

(2) *Summary of data.* FDA reviewed the Obstetrical and Gynecological Devices Classification Panel's recommendation and obtained additional information and data describing the application of automatic analysis techniques to the determination of possible fetal distress. The technique was new in 1978, and very little definitive information was available. It was reasonable to expect that as algorithms were developed and tested, confidence in automatic analysis would increase (Ref. 38).

(3) *Risks to health.*

• Electrical shock—Malfunction of the device could result in electrical shock to the patient.

• Misdiagnosis—Inadequate design or calibration of the device could lead to the generation of inaccurate diagnostic data. If inaccurate diagnostic data is used in managing the patient, the physician may prescribe a course of treatment which places the fetus and patient at risk unnecessarily.

Fetal Electroencephalographic Monitor (§ 884.2620)

(1) *Identification.* A fetal electroencephalographic monitor is a device used to detect, measure, and record in graphic form (by means of one or more electrodes placed transcervically on the fetal scalp during labor) the rhythmically varying electrical skin potentials produced by the fetal brain.

(2) *Summary of data.* The Panel based its recommendation on the fact that fetal electroencephalographic monitoring was a relatively new method of brain function evaluation during birth. Its sensitivity and applicability in the field of the fetal brain research remained to be established because clinical experience was too limited to ascertain its safe and effective use. Rosen and Peltzman, who were performing the major research on this device, were continuing with further controlled studies (Refs. 39 and 40).

(3) *Risks to health.*

• Electrical shock—Malfunction of the device could result in electrical shock to the patient.

• Misdiagnosis—Inadequate design of the device can lead to the generation of inaccurate diagnostic data. If inaccurate diagnostic data are used in managing the patient, the physician may prescribe a course of treatment that places the fetus and patient at risk unnecessarily.

• Adverse tissue reaction—Material in the device could result in a systemic or local tissue reaction when the device comes in contact with the patient.

• Infection—If the device is not properly sterilized, it may introduce microorganisms that could cause infection.

Fetal Scalp Clip Electrode and Applicator (§ 884.2685)

(1) *Identification.* A fetal scalp clip electrode and applicator is a device designed to establish electrical contact between fetal skin and an external monitoring device by means of pinching skin tissue with a nonreusable clip. This device is used to obtain a fetal electrocardiogram. This generic type of device may include a clip electrode applicator.

(2) *Summary of data.* The Panel based its recommendation on personal knowledge of, and experience with, the device. Information presented to the Panel indicated a 1 to 2 percent infection rate for newborns on whom fetal scalp clip electrodes were used (Ref. 41). The Panel noted that this device is in limited use in the United States because the circular (spiral) electrode, preferred because it is easier to apply and remove, is available.

(3) *Risks to health.*

• Adverse tissue reaction—Material in the device could cause a local tissue or systemic reaction when the device comes in contact with the fetus.

• Infection—If the device is not properly sterilized, it may introduce microorganisms that could cause infection.

• Tissue damage—Poor design or incorrect application could result in scalp injury when the device pinches the fetal scalp.

Expandable Cervical Dilator (§ 884.4250)

(1) *Identification.* An expandable cervical dilator is an instrument with two handles and two opposing blades used manually to dilate (stretch open) the cervix.

(2) *Summary of data.* The Panel based its recommendation on personal knowledge of, and experience with, the device. The Panel members' experience with the expandable cervical dilator had been that its leverage is very difficult to control in such a way that the cervix is dilated evenly.

(3) *Risks to health.*

• Laceration of the cervix—Appropriate design and materials are necessary to prevent trauma to the cervix and possible subsequent infertility.

• Adverse tissue reaction—Material in the device could cause a local tissue or systematic reaction when the device comes in contact with the patient.

• Infection—If the device is not properly sterilized, it may introduce microorganisms that could cause infection.

Vibratory Cervical Dilator (§ 884.4270)

(1) *Identification.* A vibratory cervical dilator is a device designed to dilate the cervical os by stretching it with a power-driven vibrating probe head. The device is used to gain access to the uterus or to induce abortion, but is not to be used during labor when a viable fetus is desired or anticipated.

(2) *Summary of data.* The Panel based its recommendation on experience with, and personal knowledge of, the device. The Panel reviewed the literature on the device and in a typical study of 50 patients, there were 3 failures to dilate and 3 patients with cervical tears (Ref. 42). The Panel believed that more data concerning these types of dilators were necessary before standards could be written.

(3) *Risks to health.*

• Laceration of the cervix—Appropriate design and material are necessary to prevent trauma to the cervix and possible subsequent infertility.

• Electrical shock—Malfunction of the device could result in electrical shock to the patient.

• Adverse tissue reaction—Material in the device could cause a systemic or local tissue reaction when the device comes in contact with the patient.

• Infection—If the device is not properly sterilized, it may introduce microorganisms that could cause infection.

Metreurynter-Balloon Abortion System (§ 884.5050)

(1) *Identification.* A metreurynter-balloon abortion system is a device used to induce abortion. The device is inserted into the uterine cavity, inflated, and slowly extracted. The extraction of the balloon from the uterus causes dilation of the cervical os. This generic type of device may include pressure sources and pressure controls.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' familiarity with the device and a review of the literature on this device. Although journal articles discussing the use of this device in Japan indicate that it may be safe and effective (Refs. 43 and 44), the Panel believed that these data were inconclusive and that more studies needed to be performed to establish the performance characteristics of the device. A standard textbook mentioned that the device is rarely used because of potential trauma or infection, unpredictability, and the risk of a live-born fetus (Ref. 45).

(3) *Risks to health.*

• Infection—If the device is not properly sterilized, it may introduce microorganisms that could cause infection.

• Trauma, laceration, hemorrhage, and perforation—Poor design of the device could cause uneven dilation of the cervix causing injury to the patient.

• Adverse tissue reaction—Material or substances in the device could cause a systemic or local tissue reaction when the device comes in contact with the patient's cervix.

• Unnecessary medical procedures—Loss of the device could result in an otherwise unnecessary medical procedure to recover the device from the uterus.

Abdominal Decompression Chamber (§ 884.5225)

(1) *Identification.* An abdominal decompression chamber is a hoodlike device used to reduce pressure on the pregnant patient's abdomen for the relief of abdominal pain during pregnancy or labor.

(2) *Summary of data.* The Panel based its recommendation on personal knowledge of, and experience with, this device. The Panel considered this device to be ineffective. Additionally, the Panel found no literature available to supply adequate clinical data supporting any claim of effectiveness. The consensus of the Panel was that any data that might be developed would support an action to ban the device because its risks outweigh its benefits.

(3) *Risks to health.*

• Difficult patient management—The device is cumbersome and covers the abdominal area of the patient, thus blocking the physician from examining the patient.

• Supine hypotension—Because the patient is required to lie on her back, the possibility of induced low blood pressure and consequent complications exists.

9. Orthopedic Devices

Ankle Joint Metal/Polymer Non-Constrained Cemented Prosthesis (§ 888.3120)

(1) *Identification.* An ankle joint metal/polymer non-constrained cemented prosthesis is a device intended to be implanted to replace an ankle joint. The device limits minimally (less than normal anatomic constraints) translation in one or more planes. It has no linkage across-the-joint. This generic type of device includes prostheses that have a tibial component made of alloys, such as cobalt-chromium-molybdenum, and a talar component made of ultra-high molecular weight polyethylene, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* The members of the Orthopedic Devices Classification Panel based their recommendation on the Panel members' personal knowledge of the device and on the available medical literature. According to Freeman (Ref. 47), ''It is still too early to say whether this operation (total ankle joint replacement) offers any advantages over arthrodesis * * *. It would appear a comfortable mobile ankle can be produced but how reliably this can be done and how long the results will last is impossible to say.'' The only available clinical study on the device at the time of the Panel meeting had been done by Newton (Ref. 48). From 1973 to 1978, 50 patients had this prosthesis implanted. There have been 20 (40 percent) reported failures. FDA believed these data are insufficient to establish the safety and effectiveness of ankle joint metal/polymer non-constrained prostheses.

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

• Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.

• Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Elbow Joint Humeral (Hemi-Elbow) Metallic Uncemented Prosthesis (§ 888.3180)

(1) *Identification.* An elbow joint humeral (hemi-elbow) metallic uncemented prosthesis is a device intended to be implanted, made of alloys such as cobalt-chromium-molybdenum, that is used to replace the distal end of the humerus formed by the trochlea humeri and the capitulum humeri. The generic type of device is limited to prostheses intended for use without bone cement (§ 888.3027).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The only available clinical data at the time of the Panel meeting were the results of 2 surgeons who had implanted 18 devices over a 10-year period (Ref. 49). An earlier publication (Ref. 50) discussed the clinical results in what appeared to be the first 10 of these 18 implantations. The devices had been implanted in nine patients (one patient had prostheses implanted bilaterally). These patients were evaluated 1 to 7 years later and only four patients (44 percent) had stable, pain-free elbows with a functional range of motion. New bone growth restricted or totally blocked elbow joint motion in three patients. The device was removed in two other patients; because of joint pain and swelling in one; and because the device had dislocated and was eroding through the skin in the other.

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in the loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

• Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and release of materials from the device to the

surrounding tissues and systemic circulation.

• Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Finger Joint Metal/Metal Constrained Uncemented Prosthesis (§ 888.3200)

(1) *Identification.* A finger joint metal/metal constrained uncemented prosthesis is a device intended to be implanted to replace a metacarpophalangeal (MCP) or proximal interphalangeal (finger) joint. The device prevents dislocation in more than one anatomic plane and consists of two components which are linked together. This generic type of device includes prostheses made of alloys, such as cobalt-chromium-molybdenum, or protheses made from alloys and ultra-high molecular weight polyethylene. This generic type of device is limited to prostheses intended for use without bone cement (§ 888.3027).

(2) *Summary of data.* The only finger joint metal/metal constrained uncemented prosthesis discussed in the literature at the time of the Panel meeting was a two-pronged stainless steel hinged prostheses that was developed by Flatt for use in the MCP and the proximal interphalangeal (PIP) joints of the fingers.

Flatt presented clinical results with the Flatt finger prosthesis in a series of publications over a 12-year period (Refs. 51 through 56). Thirty-one prostheses had been implanted for 6 months or more (6 months to 34 months); 23 in the PIP joint and 8 in the MCP joint. In the earliest of these reports, Flatt noted that despite early encouraging clinical results, the long-term outlook for the device did not look favorable. In particular, Flatt noted that the bone absorption that occurs around the neck of the prosthesis may possibly lead to obstruction of flexion. Flatt also noted that possible complications from use of the device might be: (a) Bone erosion in patients in whom the intramedullary prongs have been forced together in the medullary canal, and (b) metal fatigue and fracture of the intramedullary prongs.

Subsequent publications by Flatt (Refs. 55 and 56) showed that the predicted complications did, in fact, occur. Flatt and Ellison (Ref. 55) reported on the implantation of 242 prostheses (167 in the MCP joint and 75 in the PIP joint) with an average followup of 6.2 years (range 1 to 12 years). Twenty-six (10.7 percent) of the prostheses (15 MCP and 11 PIP) had to be removed for the following reasons: Periarticular fibrosis (bone resorption) and settling, 14; failure (i.e., fracture) of both intramedullary prongs, 2; failure of the screw holding the hinge together, 2; breakdown of the skin over the prosthesis, 5; and infection, 3. The authors reported that of the prostheses that required removal, more than half were removed because of settling within the recipient bones. Bone absorption around the intramedullary prongs, scarring, or heterotrophic bone formation around the hinge caused sufficient mechanical difficulties to necessitate removal of the prosthesis. Flatt and Ellison noted that the gradually progressing periarticular fibrosis (bone resorption) resulted in a decreased range of joint motion and was related to very active use of the hand.

Girzados and Clayton (Ref. 57) reported on the implantation of 23 Flatt finger prostheses in 11 patients with an average followup of 44 months (range 24 to 73 months). Of the 23 prostheses implanted, 11 were in the MCP joints of the fingers, 8 were in the PIP joints of the thumb. Bone absorption around the neck and stems of the prosthesis occurred in 16 of the 23 (69 percent) joints. Six prostheses (26 percent) were rated as poor results: Three had no motion postoperatively; one was grossly unstable; and two were implanted in a patient with active rheumatoid disease who, over a period of 64 months, had intermittent swelling and pain over the joints that had been replaced with the prostheses. The authors reported that ''good'' or ''fair'' results were obtained in 13 (56 percent) of the joints. However, the number of patients having pain-free stable joints with a useful range of motion (defined as ''good'') as opposed to those with limited motion, minimal pain, and instability (defined as ''fair'') could not be determined.

Problems associated with the Flatt finger prosthesis have been recognized by many authors (Refs. 58 through 63). Several authors (Refs. 58 and 59) reported that these prostheses have not been generally accepted because of the accompanying bone resorption. McFarland (Ref. 60) reported that the Flatt prosthesis had been only moderately successful, that complications were frequent and included bone overgrowth with loss of motion, migration of the prosthesis due to bone erosion, and metal failures (i.e., device fractures). Goldner and Urbaniak (Ref. 62) and Smith and Broudy (Ref. 63) noted that the bone resorption and subsequent migration of the devices was caused by the use of a rigid material in osteoporotic bone. Smith and Broudy (Ref. 63) also noted that the intramedullary prongs frequently migrate through the cortex and occasionally the hinge would break or the overlying skin would ulcerate, causing tendon rupture and infection.

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

• Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.

• Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Finger Joint Metal/Metal Constrained Cemented Prosthesis (§ 888.3210)

(1) *Identification.* A finger joint metal/metal constrained cemented prosthesis is a device intended to be implanted to replace a MCP (finger) joint. This device prevents dislocation in more than one anatomic plane and has components which are linked together. This generic type of device include prosthesis that are made of alloys, such as cobalt-chromium-molybdenum, and is limited to those prosthesis intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* Two types of these prostheses were discussed in the literature: (a) The Link prostheses, a metallic hinge intended to replace the MCP joint of a finger or thumb; and (b) the Biomedical Laboratories of the University of Cincinnati (BLUC) prostheses, a hinged metallic prostheses intended to replace the MCP joint of the thumb.

Devas and Shah (Refs. 64 and 65) reported on the implementation of 51 Link prostheses in 25 patients with an average postoperative followup of 4 years (range 2 to 6 years). In 15 (30 percent) of these implantations, the patient had persistent pain in the joint and what was described as a useless finger. The authors believed that the proportion of patients with pain was far too large to make the treatment method freely available. They noted that the main cause of failure was due to loosening of the prostheses with disruption (erosion) of the bone. They also noted that in most of the joints with good and fair results the prosthesis had become loose but that the patients were free from symptoms at the time of

evaluation. The authors believed that prosthesis loosening may have been caused by fixation of the components by injecting the cement into the metacarpal and phalangeal bone shafts, and it was noted that a modified prosthesis with a different technique of insertion was being considered (Ref. 65). Two papers (Refs. 66 and 67) described the design and testing of the BLUC thumb prostheses. Clinical results, however, were not presented. FDA believed that the data available on the devices, the clinical results of the use of the devices in 25 patients with a reported failure rate of 30 percent, and the recommendation by the authors that the procedure not be made freely available, did not establish the long-term safety and effectiveness of finger joint metal/metal constrained prostheses.

(3) *Risks to health*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Finger Joint Metal/Polymer Constrained Cemented Prosthesis (§ 888.3220)

(1) *Identification*. A finger joint metal/polymer constrained cemented prosthesis is a device intended to be implanted to replace a MCP or proximal interphalangeal (finger) joint. The device prevents dislocation in more than one anatomic plane, and consists of two components which are linked together. This generic type of device includes prostheses that are made of alloys, such as cobalt-chromium-molybdenum, and ultra-high molecular weight polyethylene, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of data*. Clinical results on three designs of finger joint polymer constrained prostheses were presented in the literature: The Calnan-Nicolle prosthesis, intended for use in the MCP and PIP joints for the fingers; the Niebauer prosthesis also intended for use in the MCP and PIP joints of the fingers; and the Swanson prosthesis intended for use in the MCP and PIP joints of the fingers and for the MCP joint of the thumb.

a. *Calnan-Nicolle prosthesis*. This device has two components: An across-the-joint component having intramedullary stems and a flexible hinge made of polypropylene, and a silicone rubber sleeve which encapsulates the flexible hinge portion of the device (Ref. 72). Griffiths and Nicolle (Ref. 73) reported on the clinical results 8 to 37 months (average of 20 months) after implantation of the Calnan-Nicolle device in 112 MCP joints in 31 patients. Complete relief from pain was obtained in four (13 percent) patients. There was much improvement over preoperative pain status in 13 (42 percent), moderate pain relief in 10 (32 percent), and little pain relief in 4 (13 percent) patients. These authors reported that a deterioration in the performance of the prosthesis occurred in up to half of the patients between 1 and 2 years after insertion of the prosthesis; and that part of the deterioration in function was due directly to mechanical failure of the prosthesis. The range of joint motion had deteriorated over time in 33 of the 40 (82.5 percent) hands on which surgery was performed. Joint deformity was ''corrected and held'' in 10 to 31 hands (32 percent), was corrected initially but recurred in 14 of 31 (45 percent) hands, and worsened in 7 of 31 (23 percent) hands. The silicone capsule (sleeve) had fractured in 31 of the 112 prostheses (28 percent). The polypropylene stems had fractured in five joints (5 percent). Nicolle (Ref. 71) noted that time and experience had shown that the polypropylene hinge of the Calnan-Nicolle prosthesis does not appear to be strong enough to withstand fully the compression and torsional stresses that may occur in the use of the hand.

b. *Niebauer prosthesis*. This device consists of a single, flexible, across-the-joint component. The intramedullary stems and the flexible hinge portion of the device are made of silicone to allow tissue penetration and fixation of the stems. Beckenbaugh et al. (Ref. 75) reported on the clinical results 12 to 65 months (average 32 months) after implantation in the MCP joints of 68 Niebauer prostheses and found a fracture rate of the device of 38.2 percent (26 devices), recurrence of clinical deformity in 44.1 percent (30 devices) and recurrence of pain in 2 percent. Goldner et al. (Ref. 76) reported a fracture rate of 29.7 percent in 37 prostheses implanted for 6.5 years and 17.5 percent fracture rate in 143 prostheses implanted 4 to 6 years. These authors believe that the silicone-polyester material used in the device may absorb lipids and become brittle, and that eventual fracture of the prosthesis is a possibility, but that fracture does not preclude a good functional result. Goldner and Urbaniak (Ref. 77) evaluated 103 patients over a 4-year period. Pain was relieved or greatly diminished postoperatively in all but 8 of the 103 patients. The average active range of motion in these patients was 51 degrees. The range of motion was noted to increase up to about 1 year postoperatively; and then thought to decrease slightly, possibly due to enlarged bony outgrowths from the surface of the bone and impingement of peripheral bone on the hinge of the device. In two (2 percent) of patients, the device had fractured, which was accompanied by deformity and a moderate amount of pain.

Hagert (Ref. 78) conducted X-ray examinations on 41 joints with Niebauer implants. This author reported that of the 41 prostheses studied, 26 (63.4 percent) were found to be damaged (i.e., cracked within the implant midsection, fragmented at the midsection, or fractured at the hinge), 1 to 36 months postoperatively. This author believed that the Niebauer implant might be too weak to withstand forces in the MCP joints, and that a possible contributing factor was the use of materials (polyester fiber and silicone rubber) with differing elasticity. This author noted that the Niebauer implant was reported to have withstood 100 million flexions during mechanical tests bending it around a fixed axis, but not exposing it simultaneously to shearing type forces which are present in the MCP joint. These shearing forces were reportedly most probably responsible for the deformation of the implant and the subsequent damage observed. Niebauer and Landry (Ref. 79) reported that destruction of the bone around the hinge of the device had occurred in a few cases and that this atrophy may be the result of pressure from the prosthesis. In an evaluation by X-ray of the 41 Niebauer prostheses, Hagert (Ref. 78) observed bone resorption in 23 of the 41 joints (56 percent). The cortex of the bone was penetrated in 13 (32 percent) of these joints. It was reported that the observed erosion of the bone is most likely caused by motion of the intramedullary stems within the medullary cavity, and is exaggerated by the rough polyester surface of the device.

c. *Swanson prosthesis*. This device is made entirely of silicone rubber and is

designed to act as an internal mold, maintaining joint alignment, becoming encapsulated and stabilized by fibrous tissue, and gliding or moving within the medullary cavity rather than being fixed to the bone (Ref. 80). A number of reports (Refs. 75 and 80 through 86) were found describing the use of the Swanson prostheses in the MCP joints of the fingers, but few reports (Refs. 87 through 90) were available describing the use of this device in the MCP joint of the thumb, or the PIP joints of the fingers. In 1976, it was reported that a new ''high performance'' silicone elastomer material had been developed for use in the Swanson prosthesis. With the exception of one report (Ref. 90), the available clinical data were obtained using prostheses made from the ''conventional'' silicone elastomer. Fracture of implants made of the ''conventional'' silicone elastomer appears to be the most frequently reported failure. Beckenbaugh et al. (Ref. 75) reported that of 186 Swanson prostheses implanted in the MCP joint for an average of 32 months (range 12 months to 65 months), 26.3 percent (49) had fractured. Hagert et al. (Ref. 82) reported that of 104 Swanson implants evaluated, 25 percent (26) had failed, either by cracking or fragmenting and fracturing within the followup period of 1.5 to 5 years. Mannerfelt and Anderson (Ref. 83) reported a fracture rate of 2.8 percent in 144 joints evaluated 1.5 to 3.5 years (average 2.5 years) after implantation. Ferlic et al. (Ref. 84) reported a fracture rate of 9 months (average 2.3 years) after implantation. Swanson (Ref. 80) reported the lowest rate of fracture, 0.88 percent, in a field clinic series involving over 3,000 implants with a followup of from 6 to 30 months.

The effects of fracture of the device on the clinical results were evaluated by several authors. Aptekar et al. (Ref. 85) described the occurrence of detritic synovitis (inflammation of the synovial tissue) due to shards of silicone rubber found in relation to a broken prosthesis. Beckenbaugh et al. (Ref. 75) noted that recurrence of deformity was associated with implant fracture, i.e., ulnar drift, in 14 percent; weakness or instability in 21 percent; hyperextension in 11 percent; and some clinical deformities in 43 percent; but that while the recurrence of deformity implied that soft tissue balance was not present after the implant fractured, it was not clear whether the imbalance caused the fracture or developed because of it.

Hagert (Ref. 86) believed that the increased displacement, i.e., ulnar deviation, noted in some joints with fractured implants, may indicate insufficiency of the fibrous capsule surrounding the implant to restrain the forces occurring at the MCP joint. This pressure, combined with movement of the implant within the medullary canal was reportedly found to cause a moderately progressive bone resorption throughout the followup period in all of the 36 joints examined. Resorption was observed around the midsection of the prosthesis where the implant was in close contact with bone and around the intramedullary stems of the device. Erosion of bone around the midsection of the device led to various degrees of migration of the device in 28 out of 36 (78 percent) of the joints examined. The author found that decreased joint flexion was observed due either to the distal migration of the implant or a growing volar bony spur in 13 out of the 39 (33 percent) joints examined. He concluded that the design of the device may be insufficient to fully restrain the volarly and proximally directed forces in the MCP joint and the serious decrease of flexion. Hagert et al. (Ref. 82) reported that although it is generally accepted that silicone rubber absorbs lipids and other substances, the effects on material changes and degradation is not adequately known. Weightman et al. (Ref. 87) noted that lipid absorption could contribute to mechanical failure of the prostheses, as chemical deterioration is known to be a prime initiator of fatigue failures of polymers. Other clinical results have been reported in the literature (Refs. 80, 81, 87, and 89) on the use of this prosthesis in large numbers of patients. These results were very similar to those summarized previously.

(3) *Risks to health*.

- Loss or reduction of joint function—Improper design of inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Hip Joint Metal Constrained Cemented or Uncemented Prosthesis (§ 888.3300)

(1) *Identification*. A hip joint metal constrained cemented or uncemented prosthesis is a device intended to be implanted to replace a hip joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have components made of alloys, such as cobalt-chromium-molybdenum, and is intended for use with or without bone cement (§ 888.3027). This device is not intended for biological fixation.

(2) *Summary of data*. The agency has obtained data and information describing the use of hip joint metal constrained prostheses. Sivash (Ref. 91) reported on implantation in 164 patients; followup time was 1 to 9 years. Breakage of the prosthesis was reported in 13 (8 percent) of the patients. Because of the lack of adequate data to demonstrate the safety and effectiveness of these implanted devices, FDA believed that use of the hip joint metal constrained prosthesis presents an unreasonable risk of illness or injury.

(3) *Risks to health*.

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to a dissolution or wearing away from the surfaces of the device and the release of material from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis (§ 888.3310)

(1) *Identification*. A hip joint metal/polymer constrained cemented or uncemented prosthesis is a device intended to be implanted to replace a hip joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have a femoral component made of alloys, such

as cobalt-chromium-molybdenum, and an acetabular component made of ultra-high molecular weight polyethylene. This generic type of device is intended for use with or without bone cement (§ 888.3027). This device is not intended for biological fixation.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

• Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.

• Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Hip Joint (Hemi-Hip) Acetabular Metal Cemented Prosthesis (§ 888.3370)

(1) *Identification.* A hip joint (hemi-hip) acetabular metal cemented prosthesis is a device intended to be implanted to replace a portion of the hip joint. This generic type of device includes prostheses that have an acetabular component made of alloys, such as cobalt-chromium-molybdenum. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

• Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.

• Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Hip Joint Femoral (Hemi-Hip) Trunnion-Bearing Metal/Polyacetal Cemented Prosthesis (§ 888.3380)

(1) *Identification.* A hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis is a two-part device intended to be implanted to replace the head and neck of the femur. This generic type of device includes prostheses that consist of a metallic stem made of alloys, such as cobalt-chromium-molybdenum, with an integrated cylindrical trunnion bearing at the upper end of the stem that fits into a recess in the head of the device. The head of the device is made of polyacetal (polyoxymethylene) and it is covered by a metallic alloy, such as cobalt-chromium-molybdenum. The trunnion bearing allows the head of the device to rotate on its stem. The prosthesis is intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on a presentation to the Panel. Dr. Ian Goldie (University of Goteborg) presented the results of several Norwegian studies with these prostheses. Dr. Goldie referred to Christiansen's series of 241 hips in which excellent results were obtained in 57 percent of the cases and good results in 33 percent. In this series, there were five infections, seven cases of loosening of the acetabular cup, two dislocations shortly after operation, two cases of femoral perforation, and three cases of heterotopic ossification. Dr. Goldie then presented the results of his own series of 61 patients. In the 19 patients with 2 years followup, and in the 28 patients with 6 months followup, there were no complications. However, in the remaining 14 patients with a followup of 1 year, there were the following complications: 2 dislocations between the head and the cup, 2 cases of heterotopic ossification, and 2 patients with inexplicable pain.

FDA sought additional data and information on the safety and effectiveness of these devices. A review of the medical literature revealed a disagreement regarding the resistance to wear of polyacetal materials. McKellop et al. (Ref. 92) reported that laboratory wear rates for polyacetal ranged from 70 percent lower than polyethylene to 540 percent higher. Dumbleton (Ref. 93) reported wear in the trunnion sleeve of the device and that polyacetal exhibits a low resistance to wear. Because of the potential problems involving its resistance to wear, the long-term effectiveness of this device is questionable. The initial investigator and his associates have been the primary users of this device. Long-term followup data are available only from the initial investigator. Clinical cases documenting effectiveness and safety of the device involve usage of less than 3 years.

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction in joint function due to excessive wear, fracture, deformation of the device components, or loosening of the device in the surgical cavity.

• Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility or resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away of the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.

• Infection—The presence of a prosthesis within the body may lead to an increased risk of infection.

Knee Joint Femorotibial Metallic Constrained Cemented Prosthesis (§ 888.3480)

(1) *Identification.* A knee joint femorotibial metallic constrained cemented prosthesis is a device intended to be implanted to replace part of a knee joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. The only knee joint movement allowed by the device is in the sagittal plane. This generic type of device includes prostheses that have an intramedullary stem at both the proximal and distal locations. The upper and lower components may be joined either by a solid bolt or pin, an internally threaded bolt with locking screw, or a bolt retained by circlip. The components of the device are made of alloys, such as cobalt-chromium-molybdenum. The stems of the device may be perforated, but are intended to be implanted with a polymethylmethacrylate luting agent (bone cement).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and experience with, the device, and its

review of the medical literature. Results from using the device in more than 720 cases have been reported in the medical literature in the United States during the past 3 years (Refs. 94, 100, and 103). Reports in the medical literature exist that document use of the device in several thousand cases worldwide during the past 10 years. The Panel believed that this extensive clinical use has revealed the usual mechanical problems, implant loosening and settling. The Panel determined that the overall risks resulting from use of the prosthesis were no worse than the risks associated with major knee surgery without implantation of a prosthesis.

Of the 957 patients reviewed by the Panel who have had this prosthesis implanted and who were discussed in the worldwide medical literature (Refs. 94 through 105), 108 (11 percent) suffered implant failure, 233 (24 percent) of the cases had complications, and 104 (11 percent) had loosening of the prosthesis.

FDA sought additional data on the safety and effectiveness of this device. Kettelkamp (Ref. 105) reported that the failure rate for the device ranges from 5 percent to 24 percent for the hinged metal knee prosthesis, with a short followup time. Kettlekamp (Ref. 105) and Chand (Ref. 106) both believe that excessive forces may be applied to the intramedullary stem bone cement interface because the constrained prosthesis hinge prevents medial/lateral joint movement. Kettlekamp believes that if the stem loosens, the cement may rub away and destroy the surrounding bone, causing a larger cavity and making revision difficult or impossible.

Kettlekamp reviewed reports in the medical literature on use of 576 Walldius hinged knee prostheses. In one group of 144 implantations, complications occurred in 29 cases (13 percent). In the remaining 432 cases, 89 (20 percent) were classified as failures, 33 (7 percent) required reoperations, and 53 (12 percent) had loosening. Fractures occurred in 11 cases (2 percent) and deep infection was reported in 35 knees (8 percent). Kettlekamp reported that the incidence of complication increased with the length of reported followup. Brady and Garber (Ref. 103) reviewed results of implanting the Shiers design of this device in 288 knees. He reported poor results in 71 knees (24 percent), reoperation was required in 33 knees (11 percent), and loosening observed in 56 knees (19 percent). Brady stated that the major problems involved with use of these prosthesis are the absence of axial (medial) rotation, the necessary resection of large amounts of bone, and the creation of physiologic dead space.

Kettlekamp (Ref. 105) and Deburge et al. (Ref. 107) reported that the major problem with the Shiers design prosthesis is loosening. Deburge reported a loosening rate of 15 percent (22 patients) during a 5-year followup of the request of implanting the Guepar constrained knee prosthesis in 152 patients. However, less than half of these instances of device loosening were symptomatic (10 of 22 patients). Reoperations were performed on the 10 patients. Other authors (Ref. 100) believed that the rate of loosening of the prosthesis is higher, possibly around 80 percent, but that only a small percentage of those patients with device loosening are symptomatic.

Arden and Kamdar (Ref. 108) reported followup for 7 years on implantation of 193 Shiers design prostheses. They reported that 11 percent of the patients had aseptic loosening. Kaushal et al. (Ref. 109) reported followup examination of a series of 30 knees about 42 months following implantation of the prosthesis. The examination revealed that 13 knees (46 percent) had phlebothrombosis, 8 knees (11 percent) had asymptomatic loosening, 4 knees (5.4 percent) had deep infections, and 3 knees (4.3 percent) had symptomatic loosening. The major problems with use of the prosthesis were settling, loosening, and limitation on the range of joint motion allowed. In preliminary data, Van Camp et al. (Ref. 110) showed that stress loading appeared to cause mechanical loosening of the device.

Walker (Ref. 111) stated that the valgus angle of the knee was ignored in the older designs of this prosthesis. Walker said this design problem resulted in lateral stress on the intramedullary stems of the device. This theory was verified experimentally by Wagner and Bourgois (Ref. 112). Wagner and Bourgois also showed that, in both the Walldius and Shiers designs of the prosthesis, the prosthesis' axis of rotation was not equivalent to the axis of the anatomic joint it replaced. These researchers said the pin in the Shiers prosthesis was turned down on the axis and that it might loosen if the prosthesis were overstressed. Because the axle pin of the Walldius prosthesis is clamped on one side, the location of the axis causes localized wear.

Although infection immediately following implantation of a prosthesis is primarily a result of surgical technique, Swanson et al. (Ref. 113) stated that the design of the prosthesis may minimize the rate of infection associated with implantation. Swanson found that the infection rate was lower when less bone was removed for insertion of the device. Phillips and Taylor (Ref. 98) reported that most groups of patients who have received this prosthesis have suffered about a 10 percent higher incidence of infection than patients in whom other generic types of knee prostheses have been implanted.

In cases of total failure of implantation of a joint prosthesis, the prosthesis may be removed and the joint fused (arthrodesis). The rate of success in performing arthrodesis is related to the amount of bone that was removed to implant the device. Arthrodesis is difficult following implantation of a constrained joint replacement device.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Knee Joint Patellofemoral Polymer/Metal Semi-Constrained Cemented Prothesis (§ 888.3540)

(1) *Identification.* A knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis is a two-part device intended to be implanted to replace part of a knee joint in the treatment of primary patellofemoral arthritis or chondromalacia. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes a component made of alloys, such as cobalt-chromium-molybdenum or austenitic steel, for resurfacing the intercondylar groove (femoral sulcus) on the anterior aspect of the distal femur, and a patellar component made of ultra-high molecular weight polyethylene. This generic type of device is limited to those devices intended for use with bone cement (§ 888.3027). The patellar component is designed to be implanted only with its femoral component.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and experience with, similar devices and a presentation made to the Panel. Fox reported on his clinical experience with this generic type of device. Fox stated that patellofemoral joint replacement was performed in more than 60 knees, with the followup since 1974. He reported that he, as well as his patients, were pleased with the results.

Other than the presentation to the Panel made by Fox, FDA was not aware of any clinical data for this device. Moreover, because Fox provided no details regarding the device or its implantation procedure, FDA was not certain that the devices Fox implanted belong to this generic class.

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

• Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution of wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.

• Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Knee Joint Patellofemorotibial Polymer/Metal/Metal Constrained Cemented Prosthesis (§ 888.3550)

(1) *Identification.* A knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis is a device intended to be implanted to replace a knee joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have a femoral component, a tibial component, a cylindrical bolt and accompanying locking hardware that are all made of alloys, such as cobalt-chromium-molybdenum, and a retropatellar resurfacing component made of ultra-high molecular weight polyethylene. The retropatellar surfacing component may be attached to the resected patella either with a metallic screw or luting agent. All stemmed metallic components within this generic class are intended to be implanted with a polymethylmethacrylate luting agent (bone cement).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' knowledge of, and experience with, the device and a presentation made to the Panel. Pritchard and Fox described their experiences with various patellofemoral joint replacing devices including this generic type of device. Pritchard has implanted patellofemorotibial joint prostheses in at least 100 patients during the 3 years prior to the Panel meeting. Also, Fox reported that he has achieved good results in over 60 cases since 1974. In May 1962, Young (Ref. 116) reported on a series of 16 patients ranging in age from 31 to 70 years who had a Young design prosthesis implanted (2 were bilateral implantations). With a followup time between 9 and 61 months (median of 20 months), 7 of these 16 experienced a clinical failure (43.8 percent) with a mean time of about 9 months before prosthesis removal and arthrodesis (joint fusion). In a later report in 1971, Young (Ref. 120) stratified results by indication: At least 3 of 19 osteoarthritic knees were failures (15.8 percent incidence); at least 17 of 45 rheumatoid knees failed (37.8 percent incidence); of 4 replacements for giant-cell tumor, 2 failed (50 percent incidence); and at least 6 of 10 traumatic arthritic knees failed (60 percent incidence).

Young noted that nine knees examined sometime after initial implantation demonstrated darkening in tissue adjacent to metallic components. Young believed that the darkening of tissue was caused by tissue contamination from corrosion products. Young also believed that similar tissue darkening was noted by Girzadas et al. (Ref. 117). Young believed that the darkening was caused by the bolts used in his design that were made from a cobalt-based alloy, whereas the other components were made from a casting alloy. Young stated that, as a result of his survey of the clinical results for 85 physicians who had implanted the Young-design prosthesis, he was not optimistic about use of the hinged metal/metal knee prostheses and their future for replacement arthroplasty.

In 1973, Hanslik (Ref. 121) reported results of using the device in 50 patients (two bilaterally implanted), principally for the indication of stereoarthrosis. Minimum followup was not given, while maximum followup was possibly 4 years. The patients ranged in age from 56 to 76 years. At least four failures (8 percent) were associated with restricted gliding of the patellofemoral articulation: One of these was attributed to polymethylmethacrylate-induced bony necrosis. Hanslik used the Young (Ref. 116) design of prosthesis and had made major modifications in implantation technique as recommended by Friedebold and Radloff (Refs. 115, 118, and 120). Hanslik performed partial resection of the patella rather than total excision and used a polymethylmethacrylate luting agent to grout the medullary stems (presumably in addition to the cancellous bone screws recommended by Young). Friedebold and Radloff (Ref. 119) reported on use of the prosthesis in femorotibial replacement in 11 patients ranging in age from 50 to 80 years, with between 6 months and 5 years of followup. There were three failures (27.3 percent).

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

• Adverse tissue reactions—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surface of the device and the release of materials from the device to the surrounding tissues and systemic circulation.

• Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Knee Joint Femoral (Hemi-Knee) Metallic Uncemented Prosthesis (§ 888.3570)

(1) *Identification.* A knee joint femoral (hemi-knee) metallic uncemented prosthesis is a device made of alloys, such as cobalt-chromium-molybdenum, intended to be implanted to replace part of a knee joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a femoral component with or without protuberance(s) for the enhancement of fixation and is limited to those prostheses intended for use without bone cement (§ 888.3027).

(2) *Summary of data.* FDA was concerned about both the severity of the clinical complications resulting from use of the device and the rate at which these complications occur. The agency

used the complication classification scheme developed by Fox (Ref. 122) and grouped complications by time periods following surgical implantation; immediate postoperative complications, within 2 weeks; short term, within 24 months; and long term, more than 24 months. Platt and Pepler reported in 1969 their clinical results on 55 patients who had this prosthesis implanted with up to 10 years followup (Ref. 123). Their reported incidence of complications ranged from: General—none reported; systemic—none reported; and remote—1 late (2 years postoperatively) paranoid schizophrenia (1.8 percent); and (4) local—at least 45 percent. The most frequent complication was immediate postoperative infection with a presumed incidence of 25.5 percent. The reoperation rate for this series of patients was reported as 20 out of 62 knees or 32.4 percent; assuming only 1 reoperation per patient, a 36.4 percent revision rate will result.

Aufranc and Jones et al. (Refs. 124 and 125) made extensive modifications to M. Smith-Peterson's original ''keeled'' femoral condylar mold (Ref. 126) and commenced a series of device implantations employing a noncemented stemmed implant in 1952. Clinical results on 64 patients with a minimum of 1-year followup showed that the incidence of complications were: Zero for general and remote categories; 3.1 percent for systemic (2 thrombophlebitic episodes); and a minimum of 25 percent for cumulated local complications. Matching Platt and Pepler's experience (Ref. 124), the most frequent complication observed was immediate postoperative infection with a presumed incidence of 20.3 percent. This series of patients, as of mid-1969, displayed a reoperation rate of 14 out of 79 knees (17.7 percent), assuming only 1 reoperation per patient. Considering this result, with their report of 16 clinical results rated at less than ''fair,'' the failure rate is calculated as 38 percent with an average followup time of 87 months. Aufranc and Jones (Ref. 124) noted that 6 of their initial 14 implantations were failures (42.9 percent) with a maximum followup of 5 years; apparently 10 more years of surgical experience reduced the overall failure rate by 5 percent, without altering the principal reported failure modes: Infection and ''poor'' clinical result.

Further review of available literature (Refs. 108 and 127 through 136), failed to disclose device experience that would significantly alter the trends described above.

(3) *Risks to health.*

- Loss or reduction of joint or limb function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in the loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution of wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and the systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.
- Death—Death may result from lipoembolic sequelae or thromboembolic complications during or immediately following implantation.

Knee Joint Patellar (Hemi-Knee) Metallic Resurfacing Uncemented Prosthesis (§ 888.3580)

(1) *Identification.* A knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis is a device made of alloys, such as cobalt-chromium-molybdenum, intended to be implanted to replace the retropatellar articular surface of the patellofemoral joint. The device limits minimally (less than normal anatomic constraints) translation in one or more planes. It has no linkage across-the-joint. This generic type of device includes prostheses that have a retropatellar resurfacing component and an orthopedic screw to transfix the patellar remnant. This generic type of device is limited to those prostheses intended for use without bone cement (§ 888.3027). This device is in class III when intended for uses other than treatment of degenerative and posttraumatic patellar arthritis; when intended for those uses, it is in class II.

(2) *Summary of data.* FDA was not aware of any valid scientific evidence supporting the safety and effectiveness of this device when intended for uses other than the treatment of degenerative and posttraumatic patellar arthritis.

3. *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Shoulder Joint Metal/Metal or Metal/Polymer Constrained Cemented Prosthesis (§ 888.3640)

(1) *Identification.* A shoulder joint metal/metal or metal/polymer constrained cemented prosthesis is a device intended to be implanted to replace a shoulder joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have a humeral component made of alloys, such as cobalt-chromium-molybdenum, and a glenoid component made of this alloy or a combination of this alloy and ultra-high molecular weight polyethylene. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of the device and on their knowledge of the medical literature (Refs. 136 through 139). Two of these references (Refs. 136 and 137) described a shoulder joint constrained prosthesis (Fenlin and Zippel designs) and report that implantation of the device relieved pain in 16 of 17 patients. In the patient with the painful prosthesis, the authors believed that the device had loosen. The times of implantation were not reported.

Fenlin (Ref. 138) reported that the Fenlin design prosthesis had been implanted in five patients. The results in three of these patients were discussed. One patient was described as being free of pain, and able to use the operated shoulder for all normal activities, except those requiring elevation of the arm above 80°. The length of followup in this patient was 20 months. Complications were reported in the other two patients. In one patient, the device had loosened at 3 months postoperatively, due to abnormal anatomy of the glenoid. The second patient suffered partial nerve palsy due to damage of the axillary nerve during surgery. Linscheid and Cofield (Ref. 139) reported on the implantation of 13 constrained shoulder joint prostheses (6

of the Stanmore design, and 7 of the Bickel design). The average time of followup was reported as 13 months and ranged from 2 to 26 months. There were two cases of dislocations of the Stanmore design prosthesis and one case of dislocation of the Bickel design prosthesis. There were two additional complications reported with the Bickel design device; one case of fracture of the humeral component and one case of loosening of the glenoid component.

FDA sought additional information on the safety and effectiveness of these devices. Cofield (Ref. 140) reported that prosthetic replacement of the shoulder joint was in 1971, an experimental, investigational procedure. This author noted that basic knowledge about shoulder biomechanics was limited and that current knowledge of shoulder prostheses was not sufficient to establish the requirements of a prosthetic replacement. Buechel et al. (Ref. 141) noted that complications with current shoulder prostheses have been associated with the designs of the devices: (1) The Bickel design shoulder joint prosthesis was reported to dislocate and loosen due to the limited motion of the prosthesis; and (2) the prosthesis design used by Lettin and Scales (presumably the Stanmore design shoulder prosthesis) was reported to significantly limit joint motion, then sublux, and eventually dislocate at the extremes of normal joint motion. Clinical results with several prosthesis designs were reported by Cofield (Ref. 140, 142, and 143). Eleven persons in whom Bickel design prostheses had been implanted were evaluated 18 months to 39 months postoperatively (Ref. 142). Three (27 percent) were experiencing significant pain. The components of the Bickel device had dislocated in two cases. The glenoid component had dislodged from the scapula in two cases and loosened in one. The humeral component had fractured in two other cases. Reoperation was required in four patients and was needed in two or three others. Cofield reported that further clinical and mechanical deterioration in these patients was anticipated due to progressive loosening of the glenoid components and fatigue fracture of the neck of the humeral component, which was not believed to be strong enough. These authors concluded that this type of shoulder joint replacement (i.e., the Bickel design) is not justified. Cofield (Refs. 140 and 143) also reported clinical results in nine patients who had received Stanmore prostheses. After an average postoperative time of 1 year (ranging between 4 and 18 months), six patients had satisfactory relief of pain and three had significant pain. The glenoid component had loosened in two patients. FDA concurred with the Panel that the reported clinical experience with these devices did not establish their long-term safety and effectiveness.

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

• Adverse tissue reaction—Inadequate biological or mechanical properties of the device such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.

• Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Shoulder Joint Glenoid (Hemi-Shoulder) Metallic Cemented (§ 888.3680) Prosthesis

(1) *Identification.* A shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis is a device that has a glenoid (socket) component made of alloys, such as cobalt-chromium-molybdenum, or alloys with ultra-high molecular weight polyethylene and intended to be implanted to replace part of a shoulder joint. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of the data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

• Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.

• Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Wrist Joint Metal Constrained Cemented Prosthesis (§ 888.3790)

(1) *Identification.* A wrist joint metal constrained cemented prosthesis is a device intended to be implanted to replace a wrist joint. The device prevents dislocation in more than one anatomic plane and consists of either a single flexible across-the-joint component or two components linked together. This generic type of device is limited to a device which is made of alloys, such as cobalt-chromium-molybdenum, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of the device and on the available medical literature. Gschwend et al. (Ref. 144) used this prosthesis in 15 cases from 1971 through 1975. Fixation was reported to be inadequate and not correlated to loads imposed on the wrist joint. In three cases (20 percent), the distal stem became loose. The stem fractured in two cases (13 percent). On one occasion (6.6 percent) the metacarpal bone broke. In another case, as a result of a disturbance of muscle balance, the investigators observed a fixed ulnar deviation of the wrist joint with a tendency toward radial penetration of the medullary canal of the third metacarpal bone. The investigators also described three cases (20 percent) of a sinking of the prosthesis into the capitate through the third metacarpal.

(3) *Risks to health.*

• Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

• Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and release of materials from the device to the surrounding tissues and systemic circulation.

• Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

10. Physical Medicine Devices

Rigid Pneumatic Structure Orthosis (§ 890.3610)

(1) *Identification*. A rigid pneumatic structure orthosis is a device intended for medical purposes to provide whole body support by means of a pressurized suit to help thoracic paraplegics walk.

(2) *Summary of data*. The Panel based its recommendation on the literature concerning the device (Refs. 145 and 146). The literature evaluation did not demonstrate that the device was safe or effective (Ref. 146). The rigid pneumatic structure orthosis was also evaluated as requested by the Veterans' Administration and the Rehabilitation Services Administration, Department of Health, Education, and Welfare (Ref. 146), and did not meet adequate performance standards for safety and effectiveness.

(3) *Risks to health*.

- Bodily injury—The device could collapse and the patient could fall, resulting in bodily injury, if inflation is lost or the zippers fail.
- Tissue trauma and/or pressure sores—Tissue trauma and/or pressure sores could result if the support beams overinflate and cause excessive pressure on the skin of the patient.

II. PMA Requirements

A PMA for these devices must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified above, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence obtained from well-controlled clinical studies, with detailed data, in order to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Applicants should submit any PMA in accordance with FDA's ''Premarket Approval (PMA) Manual.'' This manual is available upon request from FDA, Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850.

III. Request for Comments with Data

Interested persons may, on or before January 5, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the act and § 860.132 (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of these devices is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by September 22, 1995.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of these devices is submitted, the agency will, by November 6, 1995, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and § 860.130 (21 CFR 860.130) of the regulations.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Bentley, S. A., and S. M. Lewis, ''Automated Differential Leukocyte Counting: The Present State of the Art,'' *British Journal of Hematology*, 35:481–485, 1977.

2. Megla, G. K., ''The LARC Automatic White Blood Cell Analyzer,'' *Acta Cytologica*, 17:3–14, 1973.

3. Cairns, J. W. et al., ''Evaluation of the Homolog Differential Leucocyte Counter,'' *Journal of Clinical Pathology*, 30:997–1004, 1977.

4. Egan, J. J. et al., ''Evaluation of an Automated Differential Leukocyte Counting System III. Detection of Abnormal Cells,'' *American Journal of Clinical Pathology*, 62:537–544, 1974.

5. Christoper, E. A. et al., ''Automated Detection of Abnormal Cells,'' *American Journal of Medical Technology*, 40:470–473, 1974.

6. ''An Evaluation of Electroanesthesia and Electrosleep,'' National Research Council, National Technical Information Service, PB–241–305, 1974.

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List of Subjects

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Parts 868, 870, 872, 876, 880, 882, 884, 888, and 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 864, 868, 870, 872, 876, 880, 882, 884, 888, and 890 be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 864.5220 is amended by revising paragraph (c) to read as follows:

§ 864.5220 Automated differential cell counter.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule based on this proposed rule). For any automated differential cell counter described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule based on this proposed rule), been found to be substantially equivalent to an automated differential cell counter described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976. Any other automated differential cell counter described in paragraph (b)(2) of this section shall have an approved PMA or declared

completed PDP in effect before being placed in commercial distribution.

PART 868—ANESTHESIOLOGY DEVICES

3. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

4. Section 868.5400 is amended by revising paragraph (c) to read as follows:

§ 868.5400 Electroanesthesia apparatus.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule based on this proposed rule) for any electroanesthesia apparatus that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a electroanesthesia apparatus that was in commercial distribution before May 28, 1976. Any other electroanesthesia apparatus shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART—870 CARDIOVASCULAR DEVICES

5. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

6. Section 870.1350 is amended by revising paragraph (c) to read as follows:

§ 870.1350 Catheter balloon repair kit.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule). For any catheter balloon repair kit that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a catheter balloon repair kit that was in commercial distribution before May 28, 1976. Any other catheter balloon repair kit shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

7. Section 870.1360 is amended by revising paragraph (c) to read as follows:

§ 870.1360 Trace microsphere.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule). For any trace microsphere that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a trace microsphere that was in commercial distribution before May 28, 1976. Any other trace microsphere shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

8. Section 870.3850 is amended by revising paragraph (c) to read as follows:

§ 870.3850 Carotid sinus nerve stimulator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any carotid sinus nerve stimulator that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a carotid sinus nerve stimulator that was in commercial distribution before May 28, 1976. Any other carotid sinus nerve stimulator shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

9. Section 870.5300 is amended by revising paragraph (c) to read as follows:

§ 870.5300 DC-defibrillator (including paddles).

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule). For any DC-defibrillator (including paddles) described in paragraph (b)(1) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a DC-defibrillator (including paddles) described in paragraph (b)(1) of this section that was in commercial distribution before May 28, 1976. Any other DC-defibrillator (including paddles) described in paragraph (b)(1) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 872—DENTAL DEVICES

10. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

11. Section 872.3400 is amended by revising paragraph (c) to read as follows:

§ 872.3400 Karaya and sodium borate with or without acacia denture adhesive.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any karaya and sodium borate with or without acacia denture adhesive that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a karaya and sodium borate with or without acacia denture adhesive that was in commercial distribution before May 28, 1976. Any other karaya and sodium borate with or without acacia denture adhesive shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

12. Section 872.3420 is amended by revising paragraph (c) to read as follows:

§ 872.3420 Carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive that was in

commercial distribution before May 28, 1976. Any other carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

13. Section 872.3480 is amended by revising paragraph (c) to read as follows:

§ 872.3480 Polyacrylamide polymer (modified cationic) denture adhesive.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any polyacrylamide polymer (modified cationic) denture adhesive that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a polyacrylamide polymer (modified cationic) denture adhesive that was in commercial distribution before May 28, 1976. Any other polyacrylamide polymer (modified cationic) denture adhesive shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

14. Section 872.3500 is amended by revising paragraph (c) to read as follows:

§ 872.3500 Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive that was in commercial distribution before May 28, 1976. Any other polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

15. Section 872.3560 is amended by revising paragraph (c) to read as follows:

§ 872.3560 OTC denture reliner.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any OTC denture reliner that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an OTC denture reliner that was in commercial distribution before May 28, 1976. Any other OTC denture reliner shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

16. Section 872.3820 is amended by revising paragraph (c) to read as follows:

§ 872.3820 Root canal filling resin.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any root canal filling resin described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a root canal filling resin described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976. Any other root canal filling resin shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

17. The authority citation for 21 CFR part 876 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

18. Section 876.5220 is amended by revising paragraph (c) to read as follows:

§ 876.5220 Colonic irrigation system.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any colonic irrigation system described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a colonic irrigation system described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976. Any other colonic irrigation system shall have an approved PMA in effect before being placed in commercial distribution.

19. Section 876.5270 is amended by revising paragraph (c) to read as follows:

§ 876.5270 Implanted electrical urinary continence device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any implanted electrical urinary continence device that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an implanted electrical urinary continence device that was in commercial distribution before May 28, 1976. Any other implanted electrical urinary continence device shall have an approved PMA or a declared completed PDP in effect before being place in commercial distribution.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

20. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

21. Section 880.5760 is amended by revising paragraph (c) to read as follows:

§ 880.5760 Chemical cold pack snakebite kit.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any chemical cold pack snakebite kit that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date

of publication of the final rule), been found to be substantially equivalent to a chemical cold pack snakebite kit that was in commercial distribution before May 28, 1976. Any other chemical cold pack snakebite kit shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART 882—NEUROLOGICAL DEVICES

22. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

23. Section 882.1825 is amended by revising paragraph (c) to read as follows:

§ 882.1825 Rheoencephalograph.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any rheoencephalograph that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a rheoencephalograph that was in commercial distribution before May 28, 1976. Any other rheoencephalograph shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

24. Section 882.5150 is amended by revising paragraph (c) to read as follows:

§ 882.5150 Intravascular occluding catheter.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any intravascular occluding catheter that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a intravascular occluding catheter that was in commercial distribution before May 28, 1976. Any other intravascular occluding catheter shall have an approved PMA or a declared completed PDP in effect before being place in commercial distribution.

25. Section 882.5850 is amended by revising paragraph (c) to read as follows:

§ 882.5850 Implanted spinal cord stimulator for bladder evacuation.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any implanted spinal cord stimulator for bladder evacuation that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an implanted spinal cord stimulator for bladder evacuation that was in commercial distribution before May 28, 1976. Any other implanted spinal cord stimulator for bladder evacuation shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

26. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

27. Section 884.2050 is amended by revising paragraph (c) to read as follows:

§ 884.2050 Obstetric data analyzer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any obstetric data analyzer that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an obstetrical data analyzer that was in commercial distribution before May 28, 1976. Any other obstetric data analyzer shall have an approved PMA or a declared completed PDP in effect before being place in commercial distribution.

28. Section 884.2620 is amended by revising paragraph (c) to read as follows:

§ 884.2620 Fetal electroencephalographic monitor.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any fetal electroencephalographic monitor that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a fetal electroencephalographic monitor in commercial distribution before May 28, 1976. Any other fetal electroencephalographic monitor shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

29. Section 884.2685 is amended by revising paragraph (c) to read as follows:

§ 884.2685 Fetal scalp clip electrode and applicator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any fetal scalp clip electrode and applicator that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a fetal scalp clip electrode and applicator that was in commercial distribution before May 28, 1976. Any other fetal scalp clip electrode and applicator shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

30. Section 884.4250 is amended by revising paragraph (c) to read as follows:

§ 884.4250 Expandable cervical dilator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any expandable cervical dilator that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an expandable cervical dilator that was in commercial distribution before May 28, 1976. Any other expandable cervical dilator shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

31. Section 884.4270 is amended by revising paragraph (c) to read as follows:

§ 884.4270 Vibratory cervical dilators.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any vibratory cervical dilator that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a vibratory cervical dilator that was in commercial distribution before May 28, 1976. Any other vibratory cervical dilator shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

32. Section 884.5050 is amended by revising paragraph (c) to read as follows:

§ 884.5050 Metreurynter-balloon abortion system.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any metreurynter-balloon abortion system that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a metreurynter-balloon abortion system that was in commercial distribution before May 28, 1976. Any other metreurynter-balloon abortion system shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

33. Section 884.5225 is amended by revising paragraph (c) to read as follows:

§ 884.5225 Abdominal decompression chamber.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any abdominal decompression chamber that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an abdominal decompression chamber that was in commercial distribution before May 28, 1976. Any other abdominal decompression chamber shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART 888—ORTHOPEDIC DEVICES

34. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

35. Section 888.3120 is amended by revising paragraph (c) to read as follows:

§ 888.3120 Ankle joint metal/polymer non-constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any ankle joint metal/polymer non-constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a ankle joint metal/polymer non-constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other ankle joint metal/polymer non-constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

36. Section 888.3180 is amended by revising paragraph (c) to read as follows:

§ 888.3180 Elbow joint humeral (hemi-elbow) metallic uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any elbow joint humeral (hemi-elbow) metallic uncemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a elbow joint humeral (hemi-elbow) metallic uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other elbow joint humeral (hemi-elbow) metallic uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

37. Section 888.3200 is amended by revising paragraph (c) to read as follows:

§ 888.3200 Finger joint metal/metal constrained uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule), for any finger joint metal/metal constrained uncemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a finger joint metal/metal constrained uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other finger joint metal/metal constrained uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

38. Section 888.3210 is amended by revising paragraph (c) to read as follows:

§ 888.3210 Finger joint metal/metal constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any finger joint metal/metal constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a finger joint metal/metal constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other finger joint metal/metal constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

39. Section 888.3220 is amended by revising paragraph (c) to read as follows:

§ 888.3220 Finger joint metal/polymer constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90

days after date of publication of the final rule) for any finger joint metal/polymer constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a finger joint metal/polymer constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other finger joint metal/polymer constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

40. Section 888.3300 is amended by revising paragraph (c) to read as follows:

§ 888.3300 Hip joint metal constrained cemented or uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any hip joint metal constrained cemented or uncemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a hip joint metal constrained cemented or uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other hip joint metal constrained cemented or uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

41. Section 888.3310 is amended by revising paragraph (c) to read as follows:

§ 888.3310 Hip joint metal/polymer constrained cemented or uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any hip joint metal/polymer constrained cemented or uncemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a hip joint metal/polymer constrained cemented or uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other hip joint metal/polymer constrained cemented or uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

42. Section 888.3370 is amended by revising paragraph (c) to read as follows:

§ 888.3370 Hip joint (hemi-hip) acetabular metal cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any hip joint (hemi-hip) acetabular metal cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a hip joint (hemi-hip) acetabular metal cemented prosthesis that was in commercial distribution before May 28, 1976. Any other hip joint metal (hemi-hip) acetabular metal cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

43. Section 888.3380 is amended by revising paragraph (c) to read as follows:

§ 888.3380 Hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis that was in commercial distribution before May 28, 1976. Any other hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

44. Section 888.3480 is amended by revising paragraph (c) to read as follows:

§ 888.3480 Knee joint femorotibial metallic constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any knee joint femorotibial metallic constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication in the **Federal Register** of the final rule based on this proposed rule), been found to be substantially equivalent to a knee joint femorotibial metallic constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other knee joint femorotibial metallic constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

45. Section 888.3540 is amended by revising paragraph (c) to read as follows:

§ 888.3540 Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis.

* * * * *

(c) Date PMA or notice of completion of a PDP is required. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

46. Section 888.3550 is amended by revising paragraph (c) to read as follows:

§ 888.3550 Knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis

that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

47. Section 888.3570 is amended by revising paragraph (c) to read as follows:

§ 888.3570 Knee joint femoral (hemi-knee) metallic uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any knee joint femoral (hemi-knee) metallic uncemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a knee joint femoral (hemi-knee) metallic uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other knee joint femoral (hemi-knee) metallic uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

48. Section 888.3580 is amended by revising paragraph (c) to read as follows:

§ 888.3580 Knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976, or that has on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

49. Section 888.3640 is amended by revising paragraph (c) to read as follows:

§ 888.3640 Shoulder joint metal/metal or metal/polymer constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any shoulder joint metal/metal or metal/polymer constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a shoulder joint metal/metal or metal/polymer constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other shoulder joint metal/metal or metal/polymer constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

50. Section 888.3680 is amended by revising paragraph (c) to read as follows:

§ 888.3680 Shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis that was in commercial distribution before May 28, 1976. Any other shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

51. Section 888.3790 is amended by revising paragraph (c) to read as follows:

§ 888.3790 Wrist joint metal constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any wrist joint metal constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a wrist joint metal constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other wrist joint metal constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART 890—PHYSICAL MEDICINE DEVICES

52. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

53. Section 890.3610 is amended by revising paragraph (c) to read as follows:

§ 890.3610 Rigid pneumatic structure orthosis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any rigid pneumatic structure orthosis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a rigid pneumatic structure orthosis that was in commercial distribution before May 28, 1976. Any other rigid pneumatic structure orthosis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: August 9, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–22027 Filed 9–6–95; 8:45 am]

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Federal Register

Thursday
September 7, 1995

Part IV

Department of Housing and Urban Development

Grants and Cooperative Agreements, Availability, Etc.: Rescissions Act Impact on Public and Indian Housing; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR–3769–N–02; FR–3774–N–03; FR 3832–N–02; FR–3841–N–04; FR–3867–N–02; and FR–3871–N–02]

Impact of Rescissions Act on Availability of Funding for Fiscal Year 1995: Public Housing Development; Traditional Indian Housing Development; Demolition and Disposition; Public and Indian Housing Modernization Program; and Family Investment Centers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Impact of Rescissions Act on Availability of Funding for Fiscal Year (FY) 1995 for public housing development, the Traditional Indian Housing Development Program, public housing demolition and disposition, the public and Indian housing modernization program, and Family Investment Centers.

SUMMARY: The FY 1995 Rescissions Act affects the public and Indian housing programs described below by rescinding funds and amending the U.S. Housing Act of 1937. This notice advises the public of the rescissions and their impact on Notices of Funding Availability (NOFAs) that have been issued. This notice also advises the public of changes to regulation requirements and program policies, implementing some, but not all, of the provisions of the Rescissions Act that amend the 1937 Act for FY 1995.

DATES: This notice does not revise or extend any application deadlines, except with regard to demolition/disposition applications requesting replacement housing, as described in section I of this notice, under the heading **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT:

For public housing programs, contact: William Minning, Director of Policy and Evaluation Division, Room 4236. Telephone (202) 708–0713, or (202) 708–0850 (TDD).

For Indian housing programs, contact: Bruce Knott, Native American Programs Housing and Community Development Division, Room P8204. Telephone (202) 755–0068, or (202) 708–0850 (TDD).

The address for both individuals is: Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. The telephone numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION:

I. Public Housing Development

On June 16, 1995 (60 FR 31842), HUD published a NOFA that announced the availability of $600,278,866 for public housing development, of which $598,000,000 was derived from the FY 1995 appropriation and the remainder from carryover funds.

In the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995 (Pub. L. 104–19, approved July 27, 1995) (the Rescissions Act), Congress rescinded $620,600,000 of public housing development funds. The rescissions amount will be taken from FY 1995 funds, carryover funds, and recaptures.

The Rescissions Act provides that:

> [O]f the total rescinded under this heading, [Annual Contributions for Assisted Housing,] $700,600,000 shall be from amounts earmarked for development or acquisition costs of public housing (including $80,000,000 of funds for public housing for Indian families), except that such rescission shall not apply to funds for priority replacement housing for units demolished or disposed of (including units to be disposed of pursuant to a homeownership program under section 5(h) or title III of the United States Housing Act of 1937, as amended (hereinafter referred to as ''the Act'')) from the existing public housing inventory, as determined by the Secretary, or to funds related to litigation settlements or court orders, and the Secretary shall not be required to make any remaining funds available pursuant to section 213(d)(1)(A) of the Housing and Community Development Act of 1974 and notwithstanding any other provision of law, the Secretary may recapture unobligated funds for development or acquisition costs of public housing (including public housing for Indians) irrespective of the length of time funds have been reserved or of any time extension previously granted by the Secretary. * * *

Under the June 16, 1995 NOFA (60 FR 31842), applications were limited to the following funding categories:

(1) Replacements for demolition/disposition subject to section 18 of the United States Housing Act of 1937;

(2) Replacements for homeownership transfers under the HOPE I Program, and homeownership sales under section 5(h) of the U.S. Housing Act of 1937;

(3) Headquarters Reserve: Unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts; and

(4) ''Other'' applications.

Under the Rescissions Act, funds for priority replacement housing (including unforeseen housing needs resulting from natural and other disasters) and funds related to litigation settlements or court orders are not rescinded. Therefore, these are the only categories of Headquarters Reserve that can be funded. To the extent that HUD funds FY 1995 public housing development activities of this nature, however, the magnitude of the rescission dictates that HUD recapture unobligated prior year public housing funds (i.e., funds that have not been placed under an Annual Contributions Contract (ACC)), as described further below.

Because of the enactment of the Rescissions Act, HUD is now able to address only the first three categories of funding in the June 16, 1995 NOFA. To pay for the congressionally mandated FY 1995 funding actions under the first three NOFA categories, HUD will recapture prior year unobligated funds from funding awards not within congressionally protected categories.

The one-for-one replacement requirement of section 18 of the U.S. Housing Act of 1937 (the 1937 Act) was eliminated by the Rescissions Act for all public housing (but not Indian housing) demolition or disposition applications approved on or prior to September 30, 1995, including all previous section 18 approvals. Therefore, public housing (but not Indian housing) authorities are no longer required to provide replacement units for such demolition or disposition, nor is HUD obligated to make commitments to provide funding to meet that requirement. However, in keeping with the congressional directive that priority replacement housing funds are not rescinded, HUD intends to review FY 1995 replacement public housing applications and to consider funding those applications it views as best meeting the priorities stated in the NOFA.

Application Requirements

All provisions of the FY 1995 NOFA for public housing development, published on June 16, 1995, still apply except the references to category 4, ''Other'' applications. There will not be a ''fair share'' distribution of funds in FY 1995. HUD plans to destroy all category 4 ''Other'' applications submitted in response to the FY 1995 NOFA. Any public housing authorities (PHAs) interested in having their unfunded applications returned should contact the Office of Public Housing in the local HUD office.

The June 16, 1995 NOFA also provided that category 1 or 2

applications would not be funded unless the underlying demolition of disposition application was submitted by the time funding selections are made (60 FR 31845). The NOFA further provided that HUD may make a funding award if the underlying application had not yet been approved, if all aspects of the underlying application other than compliance with Section 412 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, were approvable by August 1, 1995 (See 60 FR 31845, section III.C.1, column 1.)

The last two sentences of section III.C.1. of the June 16, 1995 NOFA no longer apply and are replaced by the following three sentences:

For those housing authorities that intend to submit an application for replacement housing under this NOFA, the underlying demolition or disposition application must be submitted by September 15, 1995, and must additionally be approvable by that date. The Department may make a funding award if the underlying application has not yet been approved, if all aspects of the underlying application other than compliance with section 412 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, are approvable by that date. The Department reserves the right to extend to an individual housing authority that submits a demolition or disposition application by the extended deadline the ability to augment its application submission for items that the HUD staff finds are not complete after an initial review for approvability and that can be completed within the time specified by HUD.

II. Traditional Indian Housing Development Program

On January 20, 1995 (60 FR 4330), HUD published the NOFA for the Traditional Indian Housing Development Program for Fiscal Year 1995. The NOFA announced that up to $282,000,000 was available for new Indian Housing units. Of that amount, $20,000,000 was retained until July 1, 1995 for replacement of approved demolition/disposition units. The NOFA also included a table reflecting the percentage of total funds being made available to each of the Field Offices of Native American Programs (FONAPs) (60 FR 4331).

HUD has completed its funding decisions under this NOFA. With the exception of $1,819,131, all funds have been reserved under grants to Indian Housing Authorities.

As referenced under the Public Housing Development section of this notice, Congress rescinded $80,000,000 of funds for public housing for Indian families, which reduces the maximum authorized budget authority for FY 1995 to $202,000,000. Since HUD completed funding decisions prior to the enactment of the Rescissions Act, HUD must reduce awards made to Indian housing authorities by $78,180,869 (the amount of the rescission less unreserved funds).

HUD intends, as practical, to assign an amount to be rescinded to each FONAP based upon the original assignment of Indian Housing Development funds. Each FONAP, in consultation with representatives of client groups, will identify sources of unobligated funds equal to that FONAPs share of the rescission. If an individual FONAP has insufficient unobligated funds, any remaining funds required to meet the rescission requirements will be prorated to each remaining FONAP.

III. Demolition or Disposition of Public Housing

On January 18, 1995, HUD published in the **Federal Register** (60 FR 3706) a final rule for demolition or disposition of public housing projects. The final rule implemented section 121 of the Housing and Community Development Act of 1987, which amended section 18 of the 1937 Act, governing approvals of demolition and disposition of public and Indian housing. Section 121 provided that developments or portions of developments may not be demolished or disposed of unless the housing agency (HA) has developed a plan for the provision of a replacement unit for each unit involved. The Rescissions Act eliminates the requirement for one-for-one replacement of dwelling units in the case of any application for demolition or disposition of public housing (but not Indian housing) approved on or before September 30, 1995.

In accordance with section 1002 of the Rescissions Act, HAs that have applications for demolition, disposition, or conversion to homeownership of public housing dwelling units approved *on or before September 30, 1995,* including all previous approvals, are no longer required to provide one-for-one housing replacement, and HUD is not obligated to commit the funds necessary to carry out the replacement housing plan. The Rescissions Act provides that no application for replacement housing submitted by a public housing agency to implement a final order of a court issued, or a settlement approved by a court, before enactment of the Rescissions Act, shall be affected.

Review of Pending and New Demolition/Disposition Applications

HUD's review of all pending applications (those currently in Processing Centers or in Headquarters) and all new applications approved on or before September 30, 1995, will require compliance with all provisions of 24 CFR part 970, except that HUD will not require compliance with 24 CFR 970.11, Replacement Housing Plans. HAs submitting new demolition or disposition applications should be aware that if their applications are approved on or before September 30, 1995, replacement housing is not required.

However, as directed by Congress and stated in the public housing development section of this notice (section I, above), HUD will review and consider for funding FY 1995 applications for use of public housing development funds as priority replacement housing. As HUD will describe in another notice to be published soon in the **Federal Register**, certain Section 8 funds will also be made available for replacement of public housing units that are to be demolished or disposed of.

HAs with pending applications for demolition or disposition are encouraged to inform the residents, the related resident organizations, and the units of local government that approved the replacement housing plans of the changes brought about by the Rescissions Act.

Approved Demolition/Disposition Applications With Reserved Funding

For those HAs whose demolition or disposition applications were previously approved by HUD on or before September 30, 1995, for which there are public housing development funds or Section 8 15-year or 5-year certificates reserved (i.e., the replacement housing plan is either fully or partially funded), the HA must use the funds that have been reserved, and are not recaptured, in accordance with all applicable requirements, even though the replacement housing requirement is no longer applicable.

Other Provisions

Other provisions of the Rescissions Act may be addressed in future **Federal Register** notices.

IV. Public and Indian Housing Modernization

The Rescissions Act rescinds $815 million previously appropriated for FY 1995 modernization under Section 14 of the 1937 Act. The $815 million rescission will be achieved by the following:

Eliminating Choice in Management set-aside	$100,000,000
Reducing Lead-Based Paint Risk Assessment set-aside	4,203,655

Reducing Reserve for Emergencies and Natural Disasters	40,000,000
Reducing Comprehensive Improvement Assistance Program (CIAP) funds	70,398,701
Reducing Comprehensive Grant Program (CGP) funds	600,397,644
Total	815,000,000

Set-asides for Section 6(j) technical assistance to HAs, the Tenant Opportunity Program, inspection and technical assistance, and lead-based paint indemnification will not be affected by the rescission.

Expanded Use of Modernization

The Rescissions Act amends section 14 of the 1937 Act by adding a new subsection (q) that expands the eligible activities that may be funded with modernization assistance (CGP or CIAP). An HA may use modernization assistance for any eligible activity related to public and Indian housing that is currently authorized by the 1937 Act or applicable appropriations Acts for an HA. For example, new eligible items include:

- Development of additional units or replacement housing;
- Modernization activities related to the public or Indian housing portion of housing developments held in partnership, or cooperation with nonpublic housing entities (this would include development of replacement housing and receipt of operating subsidy); and
- Other activities related to public and Indian housing, including activities eligible under the Urban Revitalization Demonstration (Hope VI).

However, the Rescissions Act does not authorize use of modernization assistance for public and Indian housing operating assistance.

If the HA wishes to undertake any of these previously ineligible activities, the HA shall revise its Physical Needs Assessment or Management Needs Assessment, as well as the Annual Statement or Five-Year Action Plan, and shall conduct another public hearing and obtain another Local Government Statement. If the revised Annual Statement includes any of these previously ineligible activities, the HA is required to submit another Board Resolution, approving the revised Annual Statement.

The Rescissions Act also states that modernization funds must be used principally for physical improvements or replacement housing and for associated management improvements, except as otherwise approved by the Secretary.

Comprehensive Grant Program (CGP)

The effect of the Rescissions Act is to reduce by 19 percent the amount of CGP funds available in FY 1995, from $3,153,244,533 to $2,552,846,889. The Rescissions Act directs HUD ''to take actions necessary to assure that such rescission is distributed among public housing authorities, as if such rescission occurred prior to the commencement of the fiscal year.'' To comply with the Rescissions Act and to ensure that each CGP agency receives its proportionate reduction, HUD has rerun the CGP formula using the revised appropriation. HUD sent each CGP agency a letter on August 9, 1995, informing it of the revised formula amount and operating procedures to implement the rescission.

Comprehensive Improvement Assistance Program (CIAP)

On March 17, 1995 (60 FR 14538), HUD published a NOFA announcing the availability of $369,715,143 for the Comprehensive Improvement Assistance Program. The effect of the Rescissions Act is to reduce by 19 percent the amount of CIAP funds available in FY 1995, down to $299,316,442. The fund assignment to each HUD Field Office will be reduced accordingly. Since FY 1995 CIAP funding decisions were not final at the time the Rescissions Act was signed, no adjustments to FY 1995 CIAP grants are necessary. FY 1995 CIAP emergency applications that are already approved are not affected by the rescission.

V. Public and Indian Housing Family Investment Centers

HUD published a NOFA for up to $60,000,000 for Public and Indian Housing Family Investment Centers (FICs) on February 15, 1995 (60 FR 8900). HUD also published NOFAs for the following set-asides from FIC funds: $3,500,000 for the Family Investment Centers After-School Program, March 14, 1995 (60 FR 13850); $10,000,000 for a Youth Development Initiative, May 30, 1995 (60 FR 28304); and $1,000,000 for the HOPE in Youth Pilot Demonstration, July 20, 1995 (60 FR 37552).

The Rescissions Act provides that $66,000,000 shall be rescinded from amounts earmarked for family investment centers. However, $5,209,500 has already been awarded and placed under contract either to correct errors in HUD's processing of the FY 1994 family investment center competition or as part of an after school demonstration program. HUD concluded upon review that two applicants were not funded during the FY 1994 family investment center competition due to an error. HUD funded these two applicants for a total of $1,709,500. In addition HUD funded four grantees for a total of $3,500,000 as part of an after school demonstration program. These funds cannot be recaptured because they are under contract.

HID will not award additional grants in FY 1995 under the Family Investment Centers program.

Dated: August 30, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–22237 Filed 9–1–95; 4:04 pm]

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Federal Register

Vol. 60, No. 173

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

45647–46016.....1
46017–46212.....5
46213–46496.....6
46497–46748.....7

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
532.....46213
870.....45670
890.....45670
1320.....45776, 46148

7 CFR

271.....45990
272.....45990
273.....45990
945.....46017
1137.....46214
1942.....46215

8 CFR

329.....45658

10 CFR

73.....46497

12 CFR

3.....46170
208.....46170
225.....46170
325.....46170

Proposed Rules:

23.....46246

14 CFR

39.....46216
97.....46218
399.....46018

Proposed Rules:

39.....45683, 46541, 46542, 46544
71.....46547

15 CFR

275.....45659

16 CFR

600.....45659

17 CFR

201.....46498

19 CFR

10.....46188, 46334
12.....46188, 46334
24.....46334
102.....46188
123.....46334
134.....46334
162.....46334
174.....46334
177.....46334
178.....46188
181.....46334
191.....46334
206.....46500

21 CFR

Proposed Rules:

862.....45685
864.....46718
866.....45685
868.....45685, 46718
870.....45685, 46718
872.....45685, 46718
874.....45685
876.....45685, 46718
878.....45685
880.....45685, 46718
882.....45685, 46718
884.....45685, 46718
886.....45685
888.....45685, 46718
890.....45685, 46718
892.....45685
895.....46251
898.....46251

24 CFR

882.....45661
887.....45661
982.....45661
983.....45661

25 CFR

Proposed Rules:

63.....45982

26 CFR

1.....45661, 46500
4.....46500
602.....46500

Proposed Rules:

1.....46548

28 CFR

0.....46018
541.....46484
548.....46484

29 CFR

801.....46530
1601.....46219

Proposed Rules:

4.....46553
5.....46553

30 CFR

Proposed Rules:

Ch. II.....46556

31 CFR

Proposed Rules:

103.....46556

32 CFR

92.....46019