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Monday
December 11, 1995

Briefings on How To Use the Federal Register
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WASHINGTON, DC

[Two Sessions]

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New Feature in the Reader Aids!

Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.

The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.

The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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.

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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Chapter XXXII

Office of Grants and Program Systems

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is removing 7 CFR Chapter XXXII and 7 CFR Part 3201, which relates to the Competitive Research Grants Program for Forest and Rangeland Renewable Resources.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Louise Ebaugh at (202) 401–5024.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On July 1, 1986, the Secretary of Agriculture issued Secretary's Memorandum 1020–26 which abolished the Office of Grants and Program Systems (OGPS) and transferred all of its authorities, responsibilities and activities to the Cooperative State Research Service (CSRS). Pursuant to Public Law 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, Reorganization of the Department of Agriculture, on October 20, 1994. That memorandum orders the abolishment of the CSRS and the establishment of the CSREES, which assumes the function previously performed by the CSRS. CSREES previously amended Chapter XXXII by moving 7 CFR Part 3200—National Competitive Research Intitative Grants Program (NCRIGP) to 7 CFR Part 3411, December 8, 1995. It now deletes 7 CFR Part 3201—Competitive Research Grants Program for Forest and Ranewable Resources because the objectives of the program have been incorporated into the NCRIGP under newly redesignated 7 CFR Part 3411. This action vacates 7 CFR Chapter XXXII.

List of Subjects in 7 CFR Part 3201

Agricultural research, Forests and forest products, Grant programs—agriculture, Range management, Reporting and recordkeeping requirements.

CHAPTER XXXII—[REMOVED AND RESERVED]

For reasons set out in the preamble and under the authority of Public Law 103–354, Title 7, Subtitle B, Chapter XXXII is removed and reserved.

Done at Washington, D.C. this 29th day of November 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–29457 Filed 12–8–95; 8:45 am]

BILLING CODE 3410–22–M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0881]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The commentary provides guidance on issues such as the treatment under Regulation C of prequalifications, loan applications received through a broker, participations, refinancings, home-equity lines, and mergers. The Board believes the commentary will help reduce burden and ease compliance by clarifying application of the rules, providing flexibility in compliance, and consolidating the guidance that is currently available from a variety of sources.

DATES: *Effective date.* This rule is effective January 1, 1996.

Compliance date. Compliance is mandatory for collection of data that begins January 1, 1996, which is to be submitted to supervisory agencies no later than March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, W. Kurt Schumacher, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or (202) 452–2412. For users of Telecommunications Device for the Deaf (TDD), please contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). HMDA requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Lenders must file reports annually with their federal supervisory agencies and make disclosures available to the public. The reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and loan purchases. Information reported includes the location of the property to which the loan or application relates; the race or national origin, sex, and gross annual income of the borrower or applicant; and the type of purchaser for loans sold in the secondary market.

In June, the Board published a proposed staff commentary to Regulation C interpreting the regulation (60 FR 30013, June 7, 1995). The Board received approximately 130 comment letters, primarily from financial institutions and their trade associations. The commenters generally supported the Board's decision to develop a staff commentary and identified a number of additional issues that would benefit from interpretation. The commenters also made a variety of specific suggestions on the proposal.

Based on the comments received and further analysis, the Board has revised and reorganized many of the comments, and has made technical and stylistic changes to clarify the interpretations. Except as discussed below, the Board has retained the general substance of the commentary as proposed.

The commentary compliments Appendix A (Form and Instructions for

Completion of HMDA Loan/Application Register) to Regulation C. Rather than reproducing the information from Appendix A in the commentary, the Board has incorporated that material only where necessary for clarity.

A number of commenters inquired about the status of *A Guide to HMDA Reporting—Getting It Right*!—developed by member agencies of the Federal Financial Institutions Examination Council (FFIEC) (the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Reserve Board) and the Department of Housing and Urban Development (HUD) now that the Board is publishing a commentary to Regulation C. The *Guide* provides information in a more informal manner that many commenters have found useful (for example, its step-by-step guidance and the flow chart on coverage). In addition, the *Guide* provides useful information not provided in the regulation, such as the state and county codes for counties in Metropolitan Statistical Areas (MSAs). Accordingly, the member agencies of the FFIEC and HUD contemplate continuing to publish the *Guide*.

II. Section-by-Section Analysis

Section 203.1—Authority, Purpose, and Scope

1(c) Scope. Refinancings. Comments 1(c)–2 through –4 deal with refinancings. Comment 1(c)–2 states that modification, extension, and consolidation agreements (MECAs)—in which the existing obligation is not satisfied and replaced—are not refinancings. Some commenters suggested that the Board treat MECAs as refinancings, on the basis that they may serve the same purpose as formal refinancings. The Board has retained the interpretation as proposed. The Board believes that moving from the current bright-line test for refinancings to a broader test that would include MECAs and other types of renewals and extensions would increase institutions' compliance burdens significantly in determining which transactions are covered and which are not.

Comment 1(c)–3 clarifies that, for coverage purposes, an institution may base its determination of whether a transaction is a refinancing of a home-purchase loan on whether a first lien (as opposed to a subordinate lien) on a dwelling is involved. For institutions that meet the coverage test, comment 1(c)–4 makes clear that the data collection requirement (in contrast to coverage) does not depend on lien position.

Under both comments, an institution may always determine whether a new transaction is a refinancing for HMDA purposes based on the actual purpose of the existing loan. An institution also has the option to rely on the statement of the applicant or look to the security interest, if any.

Broker and investor institutions. The substance of proposed comments 1(c)–5 through –10 has been adopted as proposed, although the comments have been revised and reorganized. To address the concerns of some commenters and to allow the consistent use of the terms ''broker'' and ''investor'' in each of the comments, comment 1(c)–5 defines a ''broker'' and ''investor'' broadly. For example, as the term is used in the commentary a broker may or may not make the credit decision, depending upon the circumstances. The Board has also adopted a new comment 1(c)–9 which clarifies the reporting responsibilities of an institution that uses an agent.

Some commenters suggested revising the proposed comments to change the existing reporting responsibilities. Under the proposed commentary certain brokers could show a substantial number of denials, yet have few corresponding originations on their HMDA–LARs. This is the case where a broker makes the decision to deny certain applications rather than send them on to an investor for a credit decision. As a result, the investor reports more originations and the broker more denials. A number of commenters suggested revising this approach.

The position stated in the final commentary, like the proposal, is consistent with Appendix A's instructions for completing the HMDA–LAR, paragraphs IV.A.3 and IV.A.4. Prior to January 1, 1993, Regulation C specified that the institution in whose name a loan closed reported an origination (regardless of whether it made the credit decision), while the institution that made the credit decision reported the denials. Thus, a broker might report as an origination a loan that was approved in advance by an investor. In response to public comment, and based on its own analysis, the Board decided in 1992 that the rule for reporting originations in brokered or correspondent situations should match the reporting of denials—that is, the party making the credit decision should report both originations and denials for HMDA purposes. (See the Board's final rule revising Regulation C, at 57 FR 56963, December 2, 1992). Thus, the commentary has been adopted substantially as proposed.

Affiliate bank underwriting. In response to public comment, the Board has added a new comment 1(c)–10 to address a pre-closing review by an affiliate bank under 12 CFR 250.250, which interprets section 23A of the Federal Reserve Act, Restrictions on Transactions with Affiliates (sometimes known as a ''250.250 review''). Section 23A limits the amount of ''covered transactions'' that a bank may engage in with a single affiliate. As stated in 12 CFR 250.250, a bank has not engaged in a covered transaction when it purchases a loan made by the affiliate if the bank completes an ''independent evaluation of the credit worthiness of the mortgagor(s)'' prior to the affiliate's committing to make the loan and the bank promptly purchases the loan after the loan is made. Under HMDA, when a bank conducts an ''independent credit evaluation'' of an application it must report the action taken on the application, rather than treat the transaction as the purchase of an originated loan.

Participations. Proposed comment 1(c)–10 would have allowed the reporting of an institution's partial interest in a participation loan, including interests in some consortium loans, at the institution's option. The Board solicited comment on whether it is appropriate to report partial interests on the HMDA–LAR in this manner. Based on the comments and after further consideration, the Board has decided that for the present the HMDA data should not reflect partial interests in loans. The Board has revised the comment accordingly. Reporting partial interests could distort the HMDA data by showing a single loan as a number of loans (for example, if ten lenders participated in a loan there could be as many as ten entries in HMDA–LARs). The Board may consider amending Regulation C at a later time to allow reporting of partial interests in loans, perhaps establishing a special code to indicate the extent of the interest.

Assumptions. In response to public comment, the Board has adopted a new comment 1(c)–12 dealing with assumptions. The comment adopts and expands upon the language found in the FFIEC's

Guide to HMDA Reporting—Getting it Right!

Section 203.2—Definitions

2(b) Application. Comment 2(b)–1 has been revised to clarify that while Board interpretations of the definition of application under Regulation B (Equal

Credit Opportunity) (such as the distinction between an inquiry and an application, and the guidance concerning application procedures) are applicable to Regulation C, prequalification requests are not applications for purposes of Regulation C, even though they may be applications under Regulation B.

Comment 2(b)–2 addresses prequalification requests. Several commenters noted that institutions sometimes process and treat prequalification requests like other applications, to ensure that a notice of action taken under Regulation B is sent if the request is denied. The Board has revised comment 2(b)–2 to accommodate such practices.

In the amendments to Regulation C issued in December 1994 (59 FR 63698, December 9, 1994), the Board deferred a final determination on whether and how lenders ought to report requests for prequalifications (or preapprovals). (A preapproval request is generally considered to be a request by an applicant for a commitment from an institution to lend a specific amount, subject to the applicant's selection of residential property that is satisfactory to the institution. A preapproval program may be part of or separate from the institution's mortgage loan application program.) The Board stated that institutions need not include data about prequalifications (or preapprovals) in their HMDA submissions for calendar years 1994 or 1995.

Based on the comments and upon further analysis, the Board has determined that for 1996 data collection, institutions need not report prequalification (or preapproval) requests on the HMDA–LAR. The Board may consider amending Regulation C at a later date to address whether (and how) institutions should report some or all prequalification (or preapproval) requests.

2(c) Branch office. The Board has added a new comment 2(c)–1 to clarify that a branch office of a credit union meets the regulatory definition even if it has not been approved as a branch by a federal or state agency. The National Credit Union Administration, which charters and regulates federal credit unions, does not require approval of branch offices.

2(d) Dwelling. The Board has adopted comment 2(d)–1 substantially as proposed. Some commenters requested guidance on whether the purchase of a time-share is a purchase of a dwelling. Because the purchase of a time-share is the purchase of a ''use'' interest in the property, it is not a purchase of a dwelling for HMDA purposes. Other commenters requested guidance on the treatment of loans on structures such as dormitories and nursing homes. An institution need not treat these structures as dwellings for purposes of HMDA reporting. If an institution wishes to report the transaction it must determine that the structure is a residential structure under state or federal law.

2(f) Home-improvement loan. The Board has deleted an example in proposed comment 2(f)(1)–1 concerning the purchase of appliances to be installed as fixtures. The use of the term ''fixture'' generated numerous questions from commenters. Upon further analysis, the Board has decided not to define the term fixture because the Board believes the requirement that an institution classify a loan as a home-improvement loan suffices to distinguish these loans from other home-related consumer loans.

The Board has deleted proposed comment 2(f)(1)–2, which addressed home-improvement loans secured by a property other than the property being improved. Some commenters interpreted the comment to suggest that institutions should only report secured home-improvement loans. Rather than reiterate language from Appendix A—which instructs institutions to report both secured and unsecured home-improvement loans—the Board opted to delete the comment. Comment 4(a)(6)–2 addresses how to report the property location for a home-improvement loan secured by a property other than the property being improved.

Proposed comment 2(f)(2)–1 used the example of marketing as a means of classifying loans. Although the comment was intended to clarify that an institution satisfies the classification requirement if it designs and markets a loan product as a home improvement loan product, some commenters interpreted the comment as requiring an institution to report all loans for which the marketing might have indicated that the loan could be used for home-improvement. The Board has deleted the reference because marketing practices alone will not suffice for classifying a loan product as a home-improvement loan.

2(g) Home-purchase loan. The Board has revised the comments to § 203.2(g) in response to issues raised by commenters and to improve clarity. For example, comments 2(g)–2 and –3 clarify that, as is the case for home-improvement loans, an institution may use any reasonable standard to determine a property's primary use, and may select the standard case-by-case.

Section 203.3—Exempt Institutions

3(a) Exemption based on location, asset size, or number of home-purchase loans. Comment 3(a)–3 addresses reporting requirements for bulk purchases where no merger or acquisition of an institution is involved. Several commenters expressed concerns about data quality for these purchased loans. Commenters noted that a lender may only review a small percentage of the total loan purchase, and be unaware that information required to be reported on the HMDA–LAR is missing for some loans in the bulk purchase. The Board recognizes the reporting difficulties associated with bulk purchases, but believes that HMDA requires the reporting of these data in an accurate and complete manner.

Section 203.4—Compilation of Loan Data

4(a) Data format and itemization. Paragraph 4(a)(1)—Application date. The Board has revised comments 4(a)(1)–1 and –2 to clarify that while an institution is allowed flexibility, its approach in reporting the application date for its entire HMDA submission should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

The Board has revised comment 4(a)(1)–3 to clarify that the comment applies to all reinstated applications (not only counteroffers and denials).

Paragraph 4(a)(2)—Type and purpose. In response to comments on proposed comment 2(f)(1)–4, the Board has added a new comment 4(a)(2)–1 concerning loans that are for more than one covered purpose (home purchase, home improvement, or refinancing).

Paragraph 4(a)(3)—Occupancy. Proposed comment 4(a)(3)–1 dealt with the occupancy status for properties located outside the MSAs in which an institution has a home or branch office, and allowed an institution to report the actual occupancy status. The final comment makes this rule applicable also to a multifamily property loan. Although Appendix A is written more narrowly, the Board believes this more permissive rule will reduce compliance burden and will not adversely affect data quality.

Paragraph 4(a)(4)—Loan amount. In response to requests by commenters, the Board has added a new comment 4(a)(4)–4 concerning the loan amount to be reported in the case of an assumption of a loan.

Proposed comment 4(a)(4)–4 has been deleted, consistent with the position taken on the nonreporting of loan

participations. (See discussion of comment 1(c)–11, above.)

Paragraph 4(a)(5)—Type of action taken and date. Comment 4(a)(5)–1 deals with the ''action taken'' code to be used for counteroffers. A change has been made to illustrate that counteroffers may contain other terms different from those initially requested besides loan amount. Counteroffers that are not accepted by the applicant are to be reported as denials. If there are a series of offers or counteroffers, an institution reports only the final action taken at the conclusion of the negotiations. In addition, in some circumstances a rejected counteroffer that is reinstated and accepted by the applicant need not be reported as a denial. (See comment 4(a)(1)–3.)

Comment 4(a)(5)–2 deals with rescinded transactions. Some commenters asked whether they must consistently report the action taken in the case of a loan rescission as either ''approved but not accepted'' or as ''loan originated.'' The Board believes that a strict requirement is not warranted in light of the small number of loans that are rescinded.

Comment 4(a)(5)–4 relates to conditional approvals. The proposal stated that if an institution approves an application subject to conditions that are not met, the action is reported as a denial. In response to comments, the Board has revised the comment to reflect that not all instances of failure to satisfy conditions should be classed as denials. For example, if a loan application is approved subject to routine conditions such as attendance at the closing or payment of closing costs, and such conditions are not met, the action is reported as approved but not accepted, rather than denied. However, loan approval subject to an underwriting condition (such as a larger downpayment or obtaining a cosigner or guarantor) is reported as a denial if the condition is not met.

Comment 4(a)(5)–5 gives options for reporting the date of action taken for applications approved but not accepted. In response to comments received, the options have been expanded.

Paragraph 4(a)(6)—Property location. In response to comments and to improve the usefulness of the HMDA data, the Board has revised proposed comment 4(a)(6)–1 and added a new comment to indicate that for home–improvement loans involving multiple properties, an institution should generally report the location of the property being improved.

Paragraph 4(a)(7)—Applicant and income data. Applicant data. The Board has revised and reordered comments 4(a)(7)–1 through –5 for greater guidance. For example, comment 4(a)(7)–3 clarifies that a creditor is not required to collect monitoring information if the face-to-face meeting occurs after the application process is complete, and comment 4(a)(7)–4 clarifies that a joint applicant may enter the government monitoring information on behalf of an absent co-applicant. The Board has expanded comment 4(a)(7)–5 to address the treatment of remote electronic application processes that use text communication (such as Internet-based services) rather than ''live'' oral and visual communication. Such applications are treated as mail applications.

Income data. The Board has revised and reorganized the comments concerning the reporting of income data. For example, proposed comment 4(a)(7)–5 provided that institutions must report all income used to make the credit decision, even if the funds were not included in the debt-to-income ratio. Proposed comment 4(a)(7)–7 provided that an institution should not report the income of cosigners and guarantors, even if the creditor relied on that income in making the credit decision. Commenters believed that guarantors' and cosigners' income should be reported if that income was in fact relied upon by the creditor. Several commenters noted that to do otherwise is inconsistent with the general rule that creditors report the income relied on. Some commenters made a distinction between cosigners, who are primarily liable on the obligation, and guarantors, who are secondarily liable. They suggested that an institution should report the income of cosigners but not guarantors. Based on the comments received and upon further analysis, the Board has revised and consolidated the proposed comments into comment 4(a)(7)–6 to clarify that institutions report the income of applicants and cosigners (but not guarantors) to the extent relied upon in making the credit decision.

Paragraph 4(c) Optional data. In response to comments, comment 4(c)–1 has been modified to reflect that state regulations also may require the reporting of the reasons for denial.

Section 203.6—Enforcement

6(b) Bona fide errors. Comment 6(b)–1 states that an error is bona fide only if the institution maintains reasonable procedures to avoid the error. To provide an example of reasonable procedures, the proposed comment had used the word ''audit'' in the sense of examine and check. Because some commenters interpreted this as a requirement to conduct a formal audit, the Board has revised the comment.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as set forth below:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Part 203 is amended by adding a new Supplement I—Staff Commentary after the Appendices to read as follows:

Supplement I to Part 203—Staff Commentary

Introduction

1. *Status and citations.* The commentary in this supplement is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues formal staff interpretations of Regulation C (12 CFR part 203). The parenthetical citations given are references to Appendix A to Regulation C, Form and Instructions for Completion of the HMDA Loan/Application Register.

Section 203.1—Authority, Purpose, and Scope

1(c) *Scope.*

1. *General.* The comments in this section address issues affecting coverage of institutions, exemptions from coverage, and data collection requirements. (Appendix A of this part, I., IV., and V.)

2. *Meaning of refinancing.* A refinancing of a loan is the satisfaction and replacement of an existing obligation by a new obligation by the same borrower. The term ''refinancing'' refers to the new obligation. If the existing obligation is not satisfied and replaced, but is only renewed, modified, extended, or consolidated (as in certain modification, extension, and consolidation agreements), the transaction is not a refinancing for purposes of HMDA. (Appendix A of this part, Paragraph V.A.5. Code 3.)

3. *Refinancing—coverage.* The regulation bases coverage, in part, on whether an institution originates home purchase loans. For determining whether an institution is subject to Regulation C or is exempt from coverage, an origination of a home-purchase loan includes the refinancing of a home-purchase loan. An institution may always determine the actual purpose of the existing obligation (for example, by reference to available documents). (Appendix A of this part, Paragraphs I.B., I.C., and I.D.) Alternatively, an institution may:

i. Rely on the statement of the applicant that the existing obligation was (or was not) a home-purchase loan; or

ii. Assume that the new obligation is not a refinancing of a home-purchase loan if

either the existing obligation or the new obligation is not secured by a first lien on the dwelling.

4. *Refinancing—data collection.* The regulation requires collection and reporting of data on refinancings of home-purchase and home-improvement loans. An institution may always determine the actual purpose of the existing obligation (for example, by reference to available documents). (Appendix A of this part, Paragraph V.A.5. Code 3.) Alternatively, an institution may:

i. Rely on the statement of the applicant that the existing obligation was (or was not) a home-purchase or home-improvement loan; or

ii. Assume that the new obligation is a refinancing of a home-purchase or home-improvement loan only if the existing obligation was secured by a lien on a dwelling; or

iii. Assume that the new obligation is a refinancing of a home-purchase or home-improvement loan only if the new obligation will be secured by a lien on a dwelling.

5. *The broker rule and the meaning of ''broker'' and ''investor.''* For the purposes of the guidance given in this commentary, an institution that takes and processes a loan application and arranges for another institution to acquire the loan at or after closing is acting as a ''broker,'' and an institution that acquires a loan from a broker at or after closing is acting as an ''investor.'' (The terms used in this commentary may have different meanings in certain parts of the mortgage lending industry and other terms may be used in place of these terms, for example in the Federal Housing Administration mortgage insurance programs.) Depending on the facts, a broker may or may not make a credit decision on an application (and thus it may or may not have reporting responsibilities). If the broker makes a credit decision, it reports that decision; if it does not make a credit decision, it does not report. If an investor reviews an application and makes a credit decision prior to closing, the investor reports that decision. If the investor does not review the application prior to closing, it reports only the loans that it purchases; it does not report the loans it does not purchase. Thus, an institution that makes a credit decision on an application prior to closing reports that decision regardless of whose name the loan closes in. (Appendix A of this part, Paragraphs IV.A. and V.B.)

6. *Illustrations of the broker rule.* Assume that, prior to closing, four investors receive the same application from a broker; two deny it, one approves it, and one approves it and acquires the loan. In these circumstances, the first two report denials, the third reports the transaction as approved but not accepted, and the fourth reports an origination (whether the loan closes in the name of the broker or the investor). Alternatively, assume that the broker denies a loan before sending it to an investor; in this situation, the broker reports a denial. (Appendix A of this part, Paragraphs IV.A. and V.B.)

7. *Broker's use of investor's underwriting criteria.* If a broker makes a credit decision based on underwriting criteria set by an investor, but without the investor's review prior to closing, the broker has made the credit decision. The broker reports as an origination a loan that it approves and closes, and reports as a denial an application that it turns down (either because the application does not meet the investor's underwriting guidelines or for some other reason). The investor reports as purchases only those loans it purchases. (Appendix A of this part, Paragraphs IV.A. and V.B.)

8. *Insurance and other criteria.* If an institution evaluates an application based on the criteria or actions of a third party other than an investor (such as a government or private insurer or guarantor), the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example). (Appendix A of this part, Paragraphs IV.A. and V.B.)

9. *Credit decision of agent is decision of principal.* If an institution approves loans through the actions of an agent, the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example). State law determines whether one party is the agent of another. (Appendix A of this part, Paragraphs IV.A. and V.B.)

10. *Affiliate bank underwriting (250.250 review).* If an institution makes an independent evaluation of the creditworthiness of an applicant (for example, as part of a pre-closing review by an affiliate bank under 12 CFR 250.250, which interprets section 23A of the Federal Reserve Act), the institution is making a credit decision. If the institution then acquires the loan, it reports the loan as an origination whether the loan closes in the name of the institution or its affiliate. An institution that does not acquire the loan but takes another action reports that action. (Appendix A of this part, Paragraphs IV.A. and V.B.)

11. *Participation loan.* An institution that originates a loan and then sells partial interests to other institutions reports the loan as an origination. An institution that acquires only a partial interest in such a loan does not report the transaction even if it has participated in the underwriting and origination of the loan. (Appendix A of this part, Paragraphs I., II., IV., and V.)

12. *Assumptions.* An assumption occurs when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation. An institution reports as a home-purchase loan an assumption (or an application for an assumption) in the amount of the outstanding principal. If a transaction does not involve a written agreement between a new borrower and the institution, it is not an assumption for HMDA purposes and is not reported. (Appendix A of this part, Paragraphs IV.A. and V.B.)

Section 203.2—Definitions

2(b) *Application.*

1. *Consistency with Regulation B.* Board interpretations that appear in the official staff commentary to Regulation B (Equal Credit Opportunity, 12 CFR Part 202, Supplement I) are generally applicable to the definition of an application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests. (Appendix A of this part, Paragraph IV.A.)

2. *Prequalification.* A prequalification request is a request by a prospective loan applicant for a preliminary determination on whether the prospective applicant would likely qualify for credit under an institution's standards, or on the amount of credit for which the prospective applicant would likely qualify. Some institutions evaluate prequalification requests through a procedure that is separate from the institution's normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on the HMDA–LAR, even though these requests may constitute applications under Regulation B. (Appendix A of this part, Paragraphs I. and IV.A.)

2(c) *Branch office.*

1. *Credit union.* For purposes of Regulation C, a ''branch'' of a credit union is any office where member accounts are established or loans are made, whether or not the office has been approved as a branch by a federal or state agency. (See 12 U.S.C. 1752.) (Appendix A of this part, Paragraphs I., V.A.7., and V.C.)

2. *Depository institution.* A branch of a depository institution does not include a loan production office, the office of an affiliate, or the office of a third party such as a loan broker. (Appendix A of this part, Paragraphs I., V.A.7., and V.C.) (But see Appendix A of this part, Paragraph V.C.7., which requires certain depository institutions to report property location even for properties located outside those MSAs in which the institution has a home or branch office.)

3. *Nondepository institution.* A branch of a nondepository institution does not include the office of an affiliate or other third party such as a loan broker. (Appendix A of this part, Paragraphs I., V.A.7., and V.C.) (But see Appendix A of this part, Paragraph V.C.6., which requires certain nondepository institutions to report property location even in MSAs where they do not have a physical location.)

2(d) *Dwelling.*

1. *Scope.* The definition of ''dwelling'' is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and rental properties. A dwelling also includes a mobile or manufactured home, a multifamily structure (such as an apartment building), and a condominium or a cooperative unit. Recreational vehicles such as boats or campers are not dwellings for purposes of HMDA. (Appendix A of this part, Paragraphs I.B., IV., and V.A.5.)

2(e) *Financial institution.*

1. *Branches of foreign banks—treated as a bank.* A federal branch or a state-licensed insured branch of a foreign bank is a ''bank'' under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)), and is covered by HMDA if it meets the tests for a depository institution found in §§ 203.2(e)(1) and 203.3(a)(1) of Regulation C. (Appendix A of this part, Paragraphs I.A. and I.B.)

2. *Branches and offices of foreign banks—treated as a for-profit mortgage lending institution.* Federal agencies, state-licensed agencies, state-licensed uninsured branches

of foreign banks, commercial lending companies owned or controlled by foreign banks, and entities operating under section 25 or 25(a) of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and Agreement corporations) are not ''banks'' under the Federal Deposit Insurance Act. These entities are nonetheless covered by HMDA if they meet the tests for a nondepository mortgage lending institution found in §§ 203.2(e)(2) and 203.3(a)(2) of Regulation C. (Appendix A of this part, Paragraphs I.C. and I.D.)

2(f) *Home-improvement loan.*

1. *Definition.* A home-improvement loan is a loan that is made for the purpose of home improvement and that is classified by the institution as a home-improvement loan. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.)

2. *Statement of the applicant.* An institution may rely on the oral or written statement of an applicant regarding the proposed use of loan proceeds. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.c.)

3. *Home-equity lines.* An institution that has chosen to report home-equity lines of credit reports as a home-improvement loan only the part of a home-equity line that is intended for home improvement. An institution that reports home-equity lines reports the disposition of all applications, not just originations. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.c.)

4. *Classification requirement.* An institution has ''classified'' a loan as a home-improvement loan if it has entered the loan on its books as a home-improvement loan, or has otherwise coded or identified the loan as a home-improvement loan. For example, an institution that has booked a loan or reported it on a ''call report'' as a home-improvement loan has classified it as a home-improvement loan. An institution may also classify loans as home-improvement loans in other ways (for example, by color-coding loan files). (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.)

5. *Improvements to real property.* Home improvements include improvements both to a dwelling and to the real property on which the dwelling is located (for example, installation of a swimming pool, construction of a garage, or landscaping). (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.)

6. *Commercial and other loans.* A loan for improvement purposes originated outside an institution's consumer lending division (such as a loan to improve an apartment building made through the commercial loan department) is reported if the institution classifies it as a home-improvement loan. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 1.)

7. *Multiple-purpose loan.* A loan for home improvement and for other purposes is treated as a home-improvement loan even if less than 50 percent of the total loan proceeds are to be used for improvement, provided the institution classifies the loan as a home-improvement loan. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.) (But see comment (2)(f)–3 of this supplement on home-equity lines of credit.)

8. *Mixed-use property.* A loan to improve property used for residential and commercial purposes (for example, a building containing apartment units and retail space) satisfies the purpose requirement if the loan proceeds are primarily to improve the residential portion of the property. If the loan proceeds are to improve the entire property (for example, to replace the heating system), the loan satisfies the purpose requirement if the property itself is primarily residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis. To report the loan as a home-improvement loan, the institution must also classify it as such. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 2.)

2(g) *Home-purchase loan.*

1. *Multiple properties.* A home-purchase loan includes a loan secured by one dwelling and used to purchase another dwelling. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 1.)

2. *Mixed-use property.* A loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home-purchase loan. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis. (Appendix A of this part, Paragraphs IV.A., IV.B.1., and V.A.5. Code 1.)

3. *Farm loan.* A loan to purchase property used primarily for agricultural purposes is not a home-purchase loan even if the property includes a dwelling. An institution may use any reasonable standard to determine the primary use of the property, such as by reference to the exemption from Regulation X (Real Estate Settlement Procedures, 24 CFR 3500.5(b)(1)) for a loan on property of 25 acres or more. An institution may select the standard to apply on a case-by-case basis. (Appendix A of this part, Paragraphs IV.B.1. and V.A.5. Code 1.)

4. *Commercial and other loans.* A home-purchase loan includes a loan originated outside an institution's residential mortgage lending division (such as a loan for the purchase of an apartment building made through the commercial loan department). For home-purchase loans, there is no classification test. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 1.)

5. *Construction and permanent financing.* A home-purchase loan includes both a combined construction/permanent loan and the permanent financing that replaces a construction-only loan. It does not include a construction-only loan, which is considered ''temporary financing'' under Regulation C and is not reported. (Appendix A of this part, Paragraphs IV.A. and B.2, and V.A.5. Code 1.)

6. *Home-equity line.* An institution that has chosen to report home-equity lines of credit reports as a home-purchase loan only the part that is intended for home purchase. An institution may rely on the applicant's oral or written statement about the proposed use of the funds. An institution that reports home-equity lines reports the disposition of all applications, not just the originations. (Appendix A of this part, Paragraphs IV. and V.A.5. Code 1.)

Section 203.3—Exempt Institutions

3(a) *Exemption based on location, asset size, or number of home-purchase loans.*

1. *General.* An institution that ceases to meet the tests for HMDA coverage (such as the 10 percent test for nondepository institutions) or becomes exempt may stop collecting HMDA data beginning with the next calendar year. For example, a bank whose assets drop to $10 million or less on December 31 of a given year reports data for that full calendar year, but does not report data for the succeeding calendar year. (Appendix A of this part, Paragraph I.)

2. *Coverage after a merger.* Several scenarios of data collection responsibilities for the calendar year of a merger are described below. Under all the scenarios, if the merger results in a covered institution, that institution must begin data collection January 1 of the following calendar year. (Appendix A of this part, Paragraph I.)

i. Two institutions are exempt from Regulation C because of asset size. The institutions merge. No data collection is required for the year of the merger (even if the merger results in a covered institution).

ii. A covered institution and an exempt institution merge. The covered institution is the surviving institution. For the year of the merger, data collection is required for the covered institution's transactions. Data collection is optional for transactions handled in offices of the previously exempt institution.

iii. A covered institution and an exempt institution merge. The exempt institution is the surviving institution, or a new institution is formed. Data collection is required for transactions of the covered institution that take place prior to the merger. Data collection is optional for transactions taking place after the merger date.

iv. Two covered institutions merge. Data collection is required for the entire year. The surviving or resulting institution files either a consolidated submission or separate submissions for that year.

3. *Mergers versus purchases in bulk.* If a covered institution acquires loans in bulk from another institution (for example, from the receiver for a failed institution) but no merger or acquisition of an institution is involved, the institution reports the loans as purchased loans. (Appendix A of this part, Paragraph V.B.)

Section 203.4—Compilation of Loan Data

4(a) *Data format and itemization.*

1. *Quarterly updating.* An institution must make a good-faith effort to record all data concerning covered transactions—loan originations (including refinancings), loan purchases, and the disposition of applications that did not result in originations—fully and accurately within 30 days after the end of each calendar quarter. If some data are inaccurate or incomplete despite this good-faith effort, the error or omission is not a violation of Regulation C provided that the institution corrects and completes the information prior to reporting the HMDA–LAR to its regulatory agency. (Appendix A of this part, Paragraph II.E.)

2. *Updating—agency requirements.* Certain state or federal regulations, such as the

Federal Deposit Insurance Corporation's regulations, may require an institution to update its data more frequently than is required under Regulation C. (Appendix A of this part, Paragraph II.E.)

3. *Form of updating.* An institution may maintain the quarterly updates of the HMDA–LAR in electronic or any other format, provided the institution can make the information available to its regulatory agency in a timely manner upon request. (Appendix A of this part, Paragraph II.E.)

Paragraph 4(a)(1) Application date.

1. *Application date—consistency.* In reporting the date of application, an institution reports the date the application was received or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). (Appendix A of this part, Paragraph V.A.2.)

2. *Application date—application forwarded by a broker.* For an application forwarded by a broker, an institution reports the date the application was received by the broker, the date the application was received by the institution, or the date shown on the application. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). (Appendix A of this part, Paragraph V.A.2.)

3. *Application date—reinstated application.* If, within the same calendar year, an applicant asks an institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction or as a new transaction. If the institution treats the request for reinstatement or reconsideration as a new transaction, it report the date of the request as the application date. (Appendix A of this part, Paragraph V.A.2.)

Paragraph 4(a)(2) Type and purpose.

1. *Purpose—multiple-purpose loan.* If a loan is for home improvement and another covered purpose, an institution reports the loan as a home-improvement loan if the institution classifies it as a home-improvement loan. Otherwise the institution reports the loan as a home-purchase loan or a refinancing, as appropriate. An institution may determine how to report such loans on a case-by-case basis. (Appendix A of this part, Paragraphs V.A.4. and 5.)

Paragraph 4(a)(3) Occupancy.

1. *Occupancy—actual occupancy status.* If a loan relates to multifamily property, property located outside an MSA, or property in an MSA where the institution has no home or branch office, the institution may either report the actual occupancy status or report using the code for ''not applicable.'' (A nondepository institution may be deemed to have a home or branch office in an MSA under § 203.2(c)(2) of Regulation C.) (Appendix A of this part, Paragraph V.A.7.)

2. *Occupancy—multiple properties.* If a loan relates to multiple properties, the institution reports the owner-occupancy status of the property for which property location is being reported. (See the comments to paragraphs 4(a)(6) Property location.) (Appendix A of this part, Paragraphs V.A.6. and 7.)

Paragraph 4(a)(4) Loan amount.

1. *Loan amount—counteroffer.* If an applicant accepts a counteroffer for an amount different from the amount initially requested, the institution reports the loan amount granted. If an applicant does not accept a counteroffer or fails to respond, the institution reports the loan amount initially requested. (Appendix A of this part, Paragraph V.A.8.f.)

2. *Loan amount—multiple-purpose loan.* Except in the case of a home-equity line of credit, an institution reports the entire amount of the loan, even if only a part of the proceeds is intended for home purchase or home improvement. (Appendix A of this part, Paragraph V.A.8.)

3. *Loan amount—home-equity line.* An institution that reports home-equity lines of credit reports only the part that is intended for home-improvement or home-purchase purposes. An institution may rely on the applicant's oral or written statement about the proposed use of the loan proceeds. (Appendix A of this part, Paragraph V.A.8.c.)

4. *Loan amount—assumption.* An institution that enters into a written agreement accepting a new party as the obligor on a loan reports the amount of the outstanding principal on the assumption as the loan amount. (Appendix A of this part, Paragraphs V.A.8.)

Paragraph 4(a)(5) Type of action taken and date.

1. *Action taken—counteroffers.* If an institution makes a counteroffer to lend on terms different from the applicant's initial request (for example, for a shorter loan maturity) and the applicant does not accept the counteroffer or fails to respond, the institution reports the action taken as a denial. (Appendix A of this part, Paragraph V.B.)

2. *Action taken—rescinded transactions.* If a borrower rescinds a transaction after closing, the institution, on a case-by-case basis, may report the transaction either as an origination or as an application that was approved but not accepted. (Appendix A of this part, Paragraph V.B.)

3. *Action taken—purchased loans.* An institution reports the loans that it purchased during the calendar year, and does not report the loans that it declined to purchase. (Appendix A of this part, Paragraph V.B.)

4. *Action taken—conditional approvals.* If an institution issues a loan approval subject to the applicant's meeting underwriting conditions (other than customary loan commitment or loan closing conditions, such as a ''clear title'' requirement or an acceptable property survey) and the applicant does not meet them, the institution reports the action taken as a denial. (Appendix A of this part, Paragraph V.B.)

5. *Action taken date—approved but not accepted.* For a loan approved by an institution but not accepted by the applicant, the institution reports using any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). (Appendix A of this part, Paragraph V.B.3.b.)

6. *Action taken date—originations.* For loan originations, an institution generally reports the settlement or closing date. For loan originations that an institution acquires through a broker, the institution reports either the settlement or closing date, or the date the institution acquired the loan from the broker. If the disbursement of funds takes place on a date later than the settlement or closing date, the institution may use the date of disbursement. For a construction/permanent loan, the institution reports either the settlement or closing date, or the date the loan converts to the permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). (Appendix A of this part, Paragraph V.B.3.)

Paragraph 4(a)(6) Property location.

1. *Property location—multiple properties (home improvement/refinance of home improvement).* For a home-improvement loan, an institution reports the property being improved. If more than one property is being improved, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA–LAR (with unique identifiers) and allocating the loan amount among the properties. (Appendix A of this part, Paragraph V.C.)

2. *Property location—multiple properties (home purchase/refinance of home purchase).* For a home-purchase loan, an institution reports the property taken as security. If an institution takes more than one property as security, the institution reports the location of the property being purchased if there is just one. If the loan is to purchase multiple properties and is secured by multiple properties, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA–LAR (with unique identifiers) and allocating the loan amount among the properties. (Appendix A of this part, Paragraph V.C.)

3. *Property location—loans purchased from another institution.* The requirement to report the property location by census tract in an MSA where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that did not have a home or branch office in that MSA and did not collect the property location information. (Appendix A of this part, Paragraph V.C.)

4. *Property location—mobile or manufactured home.* If information about the potential site of a mobile or manufactured home is not available, an institution reports using the code for ''not applicable.'' (Appendix A of this part, Paragraph V.C.)

5. *Property location—use of BNA.* At its option, an institution may report property location by using a block numbering area (BNA). The U.S. Census Bureau, in conjunction with state agencies, has established BNAs as statistical subdivisions of counties in which census tracts have not been established. BNAs are generally identified in census data by numbers in the range 9501 to 9999.99. (Appendix A of this part, Paragraph V.C.4.)

Paragraph 4(a)(7) Applicant and income data.

1. *Applicant data—completion by applicant.* An institution reports the monitoring information as provided by the applicant. For example, if an applicant checks the ''other'' box the institution reports using the ''other'' code. (Appendix A of this part, Paragraph V.D.)

2. *Applicant data—completion by lender.* If an applicant fails to provide the requested information for an application taken in person, the institution reports the data on the basis of visual observation or surname. As stated in paragraph I.B.5 to Appendix B of this part, the institution does not use the ''other'' code, but selects from the categories listed on the form. (Appendix A of this part, Paragraph V.D.)

3. *Applicant data—application completed in person.* When an applicant meets in person with a lender to complete an application that was begun by mail or telephone, the institution must request the monitoring information. If the meeting occurs after the application process is complete, for example, at closing, the institution is not required to obtain monitoring information. (Appendix A of this part, Paragraph V.D.)

4. *Applicant data—joint applicant.* A joint applicant may enter the government monitoring information on behalf of an absent joint applicant. If the information is not provided, the institution reports using the code for ''information not provided by applicant in mail or telephone application.'' (Appendix A of this part, Paragraph V.D.)

5. *Applicant data—video and other electronic application processes.* An institution that accepts applications through electronic media with a video component treats the applications as taken in person and collects the information about the race or national origin and sex of applicants. An institution that accepts applications through electronic media without a video component (for example, the Internet or facsimile) treats the applications as accepted by mail. (Appendix A of this part, Paragraph V.D.) (See Appendix B of this part for procedures to be used for data collection.)

6. *Income data—income relied upon.* An institution reports the gross annual income relied on in evaluating the creditworthiness of applicants. For example, if an institution relies on an applicant's salary to compute a debt-to-income ratio, but also relies on the applicant's annual bonus to evaluate creditworthiness, the institution reports the salary and the bonus to the extent relied upon. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes this income to the extent relied upon. But an institution does not include the income of a guarantor who is only secondarily liable. (Appendix A of this part, Paragraph V.D.5.)

7. *Income data—co-applicant.* If two persons jointly apply for a loan and both list income on the application, but the institution relies only on the income of one applicant in computing ratios and in evaluating creditworthiness, the institution reports only the income relied on. (Appendix A of this part, Paragraph V.D.5.)

8. *Income data—loan to employee.* An institution may report ''NA'' in the income field for loans to employees to protect their privacy, even though the institution relied on their income in making its credit decisions. (Appendix A of this part, Paragraph V.D.5.)

Paragraph 4(a)(8) Purchaser.

1. *Type of purchaser—loan participation interests sold to more than one entity.* An institution that originates a loan, and then sells it to more than one entity, reports the ''type of purchaser'' based on the entity purchasing the greatest interest, if any. If an institution retains a majority interest it does not report the sale. (Appendix A of this part, Paragraph V.E.)

4(c) Optional data.

1. *Agency requirements.* Certain state or federal entities, such as the Office of Thrift Supervision, require institutions to report the reasons for denial even though this is optional reporting under HMDA and Regulation C. (Appendix A of this part, Paragraph V.F.)

4(d) Excluded data.

1. *Loan pool.* The purchase of an interest in a loan pool (such as a mortgage-participation certificate, a mortgage-backed security, or a real estate mortgage investment conduit or ''REMIC'') is a purchase of an interest in a security under HMDA and is not reported on the HMDA–LAR. (Appendix A of this part, Paragraph IV.B.5.)

Section 203.5—Disclosure and Reporting

5(a) Reporting to agency.

1. *Change in supervisory agency.* If the supervisory agency for a covered institution changes (as a consequence of a merger or a change in the institution's charter, for example), the institution reports data to its new supervisory agency for the year of the change and subsequent years. (Appendix A of this part, Paragraphs I., III. and VI.)

2. *Subsidiaries.* An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the parent's supervisory agency) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution. (Appendix A of this part, Paragraph I.E. and VI.)

5(e) Notice of availability.

1. *Poster—suggested text.* The suggested wording of the poster text provided in Appendix A of this part is optional. An institution may use other text that meets the requirements of the regulation. (Appendix A of this part, Paragraph III.G.)

Section 203.6—Enforcement

6(b) Bona fide errors.

1. *Bona fide error—information from third parties.* An institution that obtains the property location information for applications and loans from third parties (such as appraisers or vendors of ''geocoding'' services) is responsible for ensuring that the information reported on its HMDA–LAR is correct. An incorrect entry for a census tract number is a bona fide error, and is not a violation of the act or regulation, provided that the institution maintains reasonable procedures to avoid such errors (for example, by conducting periodic checks of the information obtained from these third parties). (Appendix A of this part, Paragraph V.C.)

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, December 4, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30035 Filed 12–8–95; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

Assessments; Adjustment of Assessment Rate Schedule for BIF-Assessable Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Adjustment of assessment rate schedule.

SUMMARY: On November 14, 1995, the Board of Directors of the FDIC adopted a resolution to reduce to a range of 0 to 27 basis points the assessment rates applicable to deposits assessable by the Bank Insurance Fund for the semiannual assessment period beginning January 1, 1996. The reduction represents a downward adjustment of 4 basis points from the BIF assessment rate schedule currently in effect for the second semiannual assessment period of 1995.

EFFECTIVE DATE: January 1, 1996, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Frederick S. Carns, Chief, Financial Markets Section, Division of Research and Statistics, (202) 898–3930; Christine Blair, Financial Economist, Division of Research and Statistics, (202) 898–3936; Claude A. Rollin, Senior Counsel, Legal Division, (202) 898–3985; Martha L. Coulter, Counsel, Legal Division, (202) 898–7348; Federal Deposit Insurance Corporation, 550–17th Street NW., Washington, D. C., 20429.

SUPPLEMENTARY INFORMATION:

I. Adjustment of Existing BIF Assessment Rate Schedule

On August 8, 1995, the Board of Directors of the FDIC (Board) adopted a new assessment rate schedule for

deposits subject to assessment by the Bank Insurance Fund (BIF). 60 FR 42680 (August 16, 1995). The new schedule (codified as Rate Schedule 2 at 12 C.F.R. 327.9(a)) provided for an assessment-rate range of 4 to 31 basis points and became effective retroactively on June 1, 1995, the beginning of the month following the month in which the BIF reached its designated reserve ratio (DRR) of 1.25 percent of total estimated insured deposits.

In adopting that rate schedule, the Board took into account the factors required by the assessment provisions of section 7(b) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(b). Those factors include the requirement for a risk-based assessment system that is based on the risk of loss posed to BIF by each BIF-insured institution, taking into account different categories and concentrations of assets and liabilities and other relevant factors; the likely amount of any such loss; and BIF's revenue needs. (Section 7(b)(1)). They also include the requirement that rates be set to reach or maintain the DRR, taking into account BIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on members' earnings and capital, and any other factors the Board may deem appropriate. (Section 7(b)(2)).

At the same time the Board adopted the current rate schedule, it also amended the FDIC's assessment regulations to permit the Board to make limited adjustments to the schedule without notice-and-comment rulemaking. Any such adjustments can be made as the Board deems necessary to maintain the BIF reserve ratio at the DRR and can be accomplished by Board resolution. Under this provision, codified at 12 CFR 327.9(b), any such adjustment must not exceed an increase or decrease of 5 basis points and must be uniform across the rate schedule.

The amount of an adjustment adopted by the Board under 12 C.F.R. 327.9(b) is to be determined by the following considerations: (1) the amount of assessment revenue necessary to maintain the reserve ratio at the DRR; and (2) the assessment schedule that would generate such amount of assessment revenue considering the risk profile of BIF members. In determining the relevant amount of assessment revenue, the Board is to consider BIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on BIF members' earnings and capital, and any other factors the Board may deem appropriate.

Having considered all of these factors, the Board has decided to adopt an adjustment factor of 4 basis points for the semiannual assessment period beginning January 1, 1996, with a resulting adjusted schedule as follows:

BIF RATE SCHEDULE AS ADJUSTED FOR THE FIRST SEMIANNUAL PERIOD OF 1996

Capital group	Supervisory subgroup		
	A	B	C
1	[1] 0	3	17
2	3	10	24
3	10	24	27

[1] Subject to a statutory minimum assessment of $1,000 per semiannual period (which also applies to all other assessment risk classifications).

The basis for the Board's decision is discussed below.

II. Basis for the Adjustment

A. Maintaining at the Designated Reserve Ratio

On June 30, 1995, the BIF reserve ratio stood at nearly 1.29 percent, and all indications are that it continued to grow during the third quarter of 1995. If the rates in effect for the current semiannual assessment period were to continue in effect, it is likely that, absent large increases in insurance losses and deposit growth, the reserve ratio would continue to grow during the first half of 1996. BIF operating expenses and insurance losses have been lower than anticipated and are projected to remain low in the near term due to the strong economy and high capital levels in the banking industry. Even taking into account the possibility of large increases in insurance losses and deposit growth that currently appear highly unlikely, it is still probable that the reserve ratio would remain at or above the target reserve ratio of 1.25 percent in the near term. Accordingly, the Board has determined that a reduction in the BIF assessment rate schedule is necessary to comply with the statutory requirements for setting assessment rates, including the requirement that the FDIC maintain the reserve ratio at the target DRR.

B. Determination of the Adjustment Factor

1. Amount of Assessment Revenue Needed

The FDIC determined in August that an effective average BIF assessment rate at the low end of a range beginning at around 4.5 basis points was appropriate to achieve a long-term balance of BIF revenues and expenses (where expenses include monies needed to prevent dilution due to deposit growth). This determination was based on a thorough historical analysis of FDIC experience and consideration of recently enacted statutory provisions that may moderate deposit insurance losses going forward.

The Board has not altered its view that, in setting rates, it should look beyond the immediate time frame in estimating the revenue needs of the fund. However, under the law, the current balance in the BIF also is directly relevant to determining the appropriate assessment level for the first semiannual period of 1996. In light of the favorable existing conditions and outlook for the next several months, it is anticipated that even an adjustment sufficient to reduce the rate for the least-risky institutions essentially to zero for the next assessment period would still provide assessment revenue in an amount that is expected to maintain the BIF reserve ratio at or above the target ratio of 1.25 percent in the near term.

In deciding upon a rate schedule for the second semiannual assessment period of 1995, the Board considered high-growth and low-growth scenarios for the BIF balance and the anticipated reserve ratio at year end. Current information suggests that the BIF balance and reserve ratio at year end will correspond more closely to the high-than the low-growth scenario, as indicated below.

The BIF reserve ratio stood at nearly 1.29 percent as of June 30, 1995, the latest date for which complete data are available. Assuming annualized insured deposit growth of between 0 and 2 percent during the third quarter, the BIF reserve ratio may have achieved 1.30 to 1.31 percent as of September 30, 1995.[1] All indications are that the reserve ratio will continue to rise for the remainder of 1995.

Insurance losses and operating expenses for the second half of 1995 are expected to total under $400 million, while assessments plus investment income will exceed $1 billion for this period. Insured deposit growth for the second half of 1995 likely will be moderate; the annualized growth rate was 1.5 percent for the year ending on June 30, and preliminary estimates suggest that deposit growth will be near zero or possibly negative for the third quarter. Table 1 indicates that the reserve ratio is likely to reach 1.31 to 1.34 percent by year-end 1995, reflecting a range of insured deposit growth from +2 to −2 percent annually for the second half of the year.

[1] The BIF reserve ratio as of September 30, 1995, cannot be determined precisely until Call Report data showing BIF-assessable deposits for that date are processed and analyzed. This process is expected to be completed by mid-December 1995.

With a forecast horizon exceeding six months, large unexpected changes in the reserve ratio are possible, given the historical volatility in deposit growth and insurance losses. However, the outlook for the first semiannual assessment period of 1996 is for continued growth in BIF and its reserve ratio. Little change is expected in the pace of insurance losses or operating expenses, with the result that investment income is expected to be sufficient to fund BIF expenditures through June 30.

Table 1 indicates that, under the current assessment schedule, the BIF reserve ratio would exceed 1.25 percent as of June 30, 1996, even assuming a severe negative growth scenario for the reserve ratio. For example, the reserve ratio at June 30 likely would be at least 1.28 percent even if losses plus new provisions for future losses total $600 million for the first half of 1996 and insured deposits grow at an annual rate of 6 percent from mid-year 1995 through mid-year 1996. Table 1 indicates that under these same extreme assumptions, an assessment rate schedule of 0 to 27 basis points annually (4 basis points lower for all risk categories than the existing schedule) likely would maintain the reserve ratio at 1.25 percent through June 30.

In short, the FDIC's best estimate is that the BIF reserve ratio is highly likely to remain well above 1.25 percent for the first semiannual period of 1996 even if assessment revenue is minimal. Given these circumstances, it is the Board's view that assessment rates should be reduced by a substantial amount. The data reviewed above support a reduction in BIF assessment rates to the lowest levels that are consistent with an effective risk-based assessment system.

Finally, the Board notes that this reduction of BIF assessment rates is likely to have a positive impact on earnings and capital of insured institutions having deposits assessable by BIF.

2. Maintaining a Risk-Based Assessment System.

The FDI Act requires a risk-based assessment system. In adopting the current rate schedule, the Board explained its view that, to be effective, the risk-based assessment system must incorporate a range of rates that provides an incentive for institutions to control risk-taking behavior while at the same time covering the long-term costs of the obligations borne by the deposit insurer. 60 FR 42683 (August 16, 1995). The Board's decision to adopt a 4-point adjustment to the current rate schedule, thereby retaining rate differentials among the various assessment-risk classifications, continues to reflect this view.

It should be noted that, under existing statutory provisions, BIF members are subject to a minimum assessment of $1,000 for each semiannual period. (FDI Act section 7(b)(2)(iii)). Under this requirement, even those institutions posing the least risk of loss to BIF are statutorily required to pay semiannual assessments of at least that amount.

In light of its decision to reduce to zero the explicit assessment rate for those institutions in the most favorable assessment risk classification, the Board recognizes two concerns associated with the statutory minimum assessment: (1) the absence of an explicit assessment rate combined with a minimum semiannual assessment of only $1,000 suggests that the risk posed to the insurance fund by such institutions is insignificant, but FDIC experience suggests otherwise; and (2) the marginal cost of deposit insurance for such institutions is zero (that is, insurance is provided on new deposits at zero additional cost).

The first concern arises because, historically, a significant percentage of failed institutions might have qualified for the most favorable assessment risk classification two or three years prior to failure. Figure 1 shows that, of the insured institutions that failed in the period beginning with 1980 and extending through 1994, nearly 35 percent were rated CAMEL 1 or 2 as of two years prior to failure, and approximately 55 percent were rated CAMEL 1 or 2 as of three years prior to failure. Moreover, of the BIF members that failed from the beginning of 1987 through 1994, 80 percent were well capitalized as of three years prior to failure (see Figure 2).

An argument for imposing only the minimum assessment on the least-risky institutions is that the reserve ratio is intended to provide for insurance losses arising from these types of failures; because BIF has been recapitalized through assessments, the protection received during periods when only the minimum assessment is paid may be viewed as ''prepaid insurance.''

An alternative view supports an explicit, risk-based assessment rate for even the least-risky institutions as an important element of a risk-based assessment system. However, as the Board noted in adopting the existing BIF assessment rate schedule in August, the FDIC is required by statute both to have a risk-based assessment system and to maintain the reserve ratio at the target DRR. The Board cannot ignore one in favor of the other but must, instead, balance the two in an appropriate manner. The Board believes that the 4-point adjustment strikes such a balance.

Regarding the second concern noted above, among the implications of a zero marginal cost for deposit insurance is that the best-rated new institutions would receive insurance protection essentially premium-free without having contributed to the existing reserve ratio. The FDIC is analyzing this issue to determine whether new institutions should receive special assessment treatment for a period of time after they initially become insured. Without any operational track record and with no previous contribution to BIF, there is a question as to whether an essentially zero marginal rate is justified.

Another implication of a zero marginal assessment is that the largest institutions in the best category would pay the same dollar amount for deposit insurance as the smallest institutions. For example, an institution with $10 billion in BIF-assessable deposits would pay the same amount ($1,000 per semiannual period) as an institution with $10 million in BIF-assessable deposits.

The Board does not minimize the foregoing concerns. Rather, given current industry conditions, the financial health of the BIF, low projected losses, and the statutory requirement to maintain the BIF reserve ratio at the target DRR, it is the judgment of the Board that the institutions posing the lowest risk to BIF should be assessed only the statutory minimum assessment. In particular, this decision does *not* reflect a judgment that such institutions pose a near-zero risk to BIF but instead a recognition that the existing BIF balance, in excess of $25 billion, represents the significant prepayment BIF-assessable institutions have made for deposit insurance.

III. Board Resolution

The Resolution by which the Board adopted the adjustment to the current rate schedule is set out below.

Resolution

Whereas, section 7(b) of the Federal Deposit Insurance Act (''FDI Act'') requires the Board of Directors (''Board'') of the Federal Deposit Insurance Corporation (''FDIC'') to establish by regulation a risk-based assessment system; and

Whereas, section 7(b) of the FDI Act requires that when the reserve ratio of the Bank Insurance Fund (''BIF'') reaches the designated reserve ratio (''DRR'') of 1.25 percent of estimated insured deposits, the Board shall set semiannual assessments for BIF

members to maintain the reserve ratio at the DRR; and

Whereas, section 7(b) further requires that, in setting BIF semiannual assessments, the Board consider the following factors: (1) expected operating expenses; (2) case resolution expenditures and income; (3) the effect of assessments on members' earnings and capital; and (4) any other factors the Board may deem appropriate; and

Whereas, Part 327 of the FDIC's rules and regulations, 12 CFR Part 327, entitled ''Assessments,'' prescribes the rules governing the assessment of institutions insured by the FDIC; and

Whereas, on August 8, 1995, the Board adopted, by regulation, a rate schedule for deposits assessable by BIF of 4 to 31 basis points, set forth as Rate Schedule 2 at section 327.9(a) of the FDIC's rules and regulations, to become effective at the beginning of the month after BIF reached the DRR; and

Whereas, said rate schedule became effective on June 1, 1995, and continues in effect for the second semiannual assessment period of 1995; and

Whereas, section 327.9(b) of the FDIC's rules and regulations, also adopted by the Board on August 8, 1995, permits the Board, by resolution, to adjust said rate schedule upward or downward by a maximum of 5 basis points, as the Board deems necessary to maintain the reserve ratio at the DRR; and

Whereas, section 327.9(b) requires that any such adjustment shall be determined by (1) the amount of assessment revenue necessary to maintain the BIF reserve ratio at the DRR, and (2) the assessment schedule that would generate that amount of revenue considering the risk profile of BIF members; and

Whereas, in determining that amount of revenue, the Board is required to take into consideration (1) expected BIF operating expenses, (2) case resolution expenditures and income, (3) the effect of assessments on BIF members' earnings and capital, and (4) any other factors the Board may deem appropriate; and

Whereas, the BIF's operating expenses and insurance losses have been lower than anticipated and are projected to remain low in the near term due to the strong economy and high capital levels in the banking industry; and

Whereas, the BIF reserve ratio currently exceeds the target DRR and, absent unexpectedly large insurance losses or deposit growth, is expected to remain above the DRR for the first semiannual period of 1996 and beyond if the current rate schedule remains in effect without adjustment; and

Whereas, reducing BIF assessment rates is likely to have a favorable impact on earnings and capital of insured institutions having deposits insured by the BIF; and

Whereas, the Board has therefore determined that a downward adjustment to the current rate schedule is necessary to comply with the statutory requirements for setting assessments, including the requirement that the FDIC maintain the BIF reserve ratio at the DRR; and

Whereas, in determining the amount of the downward adjustment, the Board has considered the factors specified in section 327.9(b), as reflected in the attached Federal Register notice document.

Now, therefore, be it resolved, that the Board does hereby adjust, for the semiannual period beginning January 1, 1996, through June 30, 1996, BIF rate schedule based on Rate Schedule 2 at section 327.9(a) of the FDIC's rules and regulations by a reduction of 4 basis points to be applied uniformly across the schedule to each assessment risk classification represented in the schedule.

Be it further resolved, that the Board hereby directs the Executive Secretary, or his designee, to cause the aforementioned Federal Register notice document to be published in the Federal Register in a form and manner satisfactory to the Executive Secretary, or his designee, and the General Counsel, or his designee.

By order of the Board of Directors.

Dated at Washington, D.C., this 14th day of November, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

TABLE 1.—BIF ASSESSMENT RATES FACTORS TO BE CONSIDERED FIRST SEMIANNUAL ASSESSMENT PERIOD, 1996

	Current rate schedule of 4 to 31 basis points	Adjusted rate schedule of 0 to 27 basis points
BIF Ratio at December 31, 1995[1] (Percent)	1.31 to 1.34	1.31 to 1.34.
Expected Income ($Millions)	1,171	677.
Assessment Income ($Millions)	546	52.
Interest Income ($Millions)	625	620.
Expected Insurance Losses and Change in Provisions for Future Losses ($Millions)[2]	−100 to +600	−100 to +600.
Expected Operating Expenses ($Millions)	215	215.
Estimated BIF-Insured Deposits at June 30[3] ($Billions)	1,877 to 2,032	1,877 to 2,032.
BIF Ratio at June 30, 1996[4] (Percent)	1.28 to 1.40	1.25 to 1.37.

[1] Range reflects annual insured growth rate of +2 percent versus −2 percent for second half of 1995.

[2] Range based on FDIC experience, as reviewed in Federal Register notice of August 16, 1995, 60 FR 42680.

[3] Lower bound assumes annual growth of insured deposits of −2 percent for second half of 1995 and first half of 1996. Upper bound assumes annual growth of 6 percent for these same four quarters. Range based on quarterly volatility evidence from 1984:Q2 to 1995:Q1.

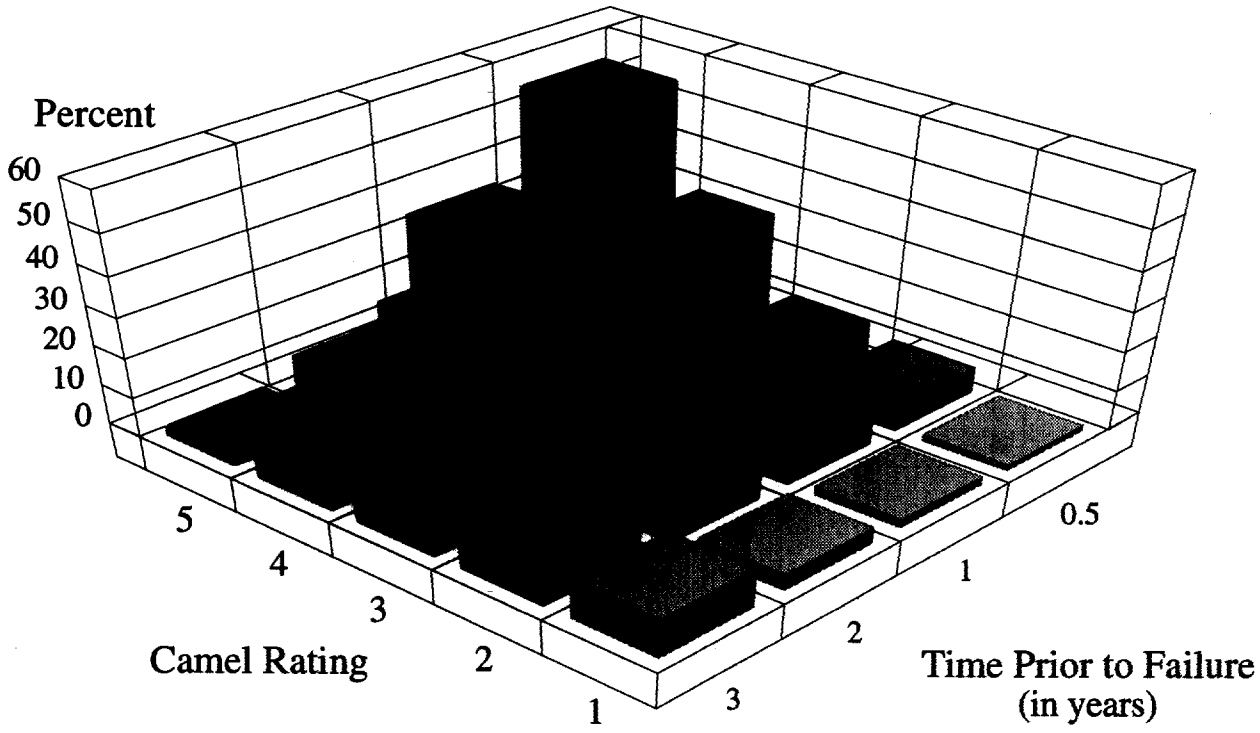
[4] Reflects ranges for all preceding items in Table 1.

BILLING CODE 6714–01–P

Figure 1

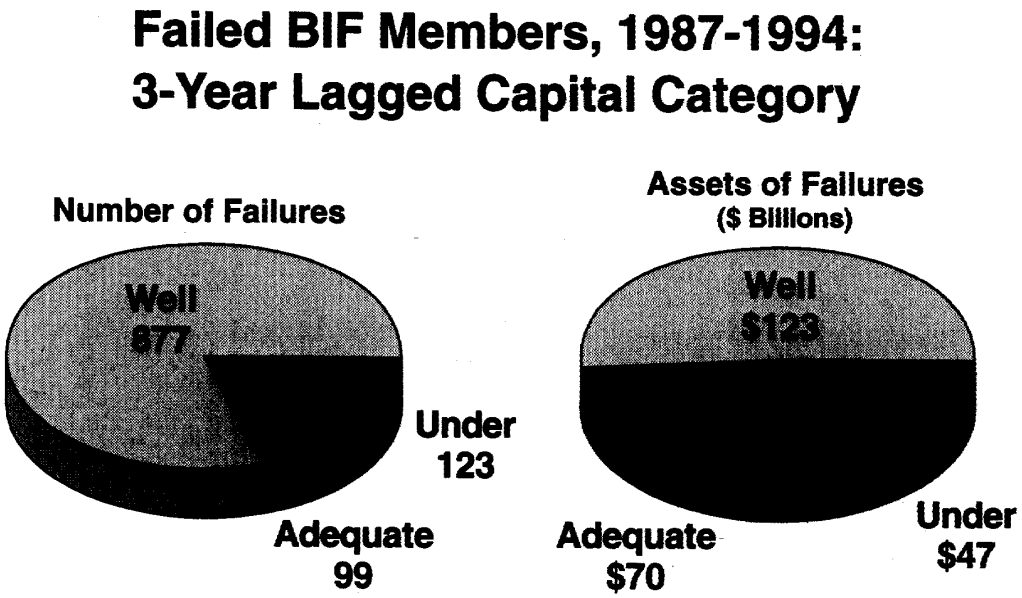
Supervisory Ratings of Failed Banks, 1980-1994

U.S. Total



Camel Rating	Time Prior to Failure (in years)			
	3	2	1	0.5
5	2.8%	7.8%	32.8%	54.4%
4	18.4	31.1	37.3	28.6
3	23.2	26.4	16.5	9.1
2	46.1	30.7	11.3	6.5
1	9.6	4.0	2.1	1.4

Figure 2



Note: For purposes of this chart, "adequately-capitalized" institutions are those with equity-to-assets ratios of four percent or more. For "well-capitalized" the cutoff is five percent.

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12 CFR Part 327

Assessments; Retention of Existent Assessment Rate Schedule for SAIF-Member Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Confirmation of assessment rate.

SUMMARY: On November 14, 1995, the Board of Directors of the FDIC (Board) adopted a resolution to retain the existing assessment rate schedule applicable to members of the Savings Association Insurance Fund (SAIF) for the first semiannual assessment period of 1996. As a result of this action, the SAIF assessment rate to be paid by depository institutions whose deposits are subject to assessment by the SAIF will continue to range from 23 cents per $100 of assessable deposits to 31 cents per $100 of assessable deposits, depending on risk classification.

EFFECTIVE DATE: January 1, 1996, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: James R. McFadyen, Senior Financial Analyst, Division of Research and Statistics, (202) 898–7027; Claude A. Rollin, Senior Counsel, Legal Division, (202) 898–3985; or Valerie Jean Best, Counsel, Legal Division, (202) 898–3812; Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Summary

Based upon the results of its semiannual review of the capitalization of the SAIF and of the SAIF assessment rates, the Board has determined to retain the existing assessment rate schedule applicable to SAIF-member institutions for the first semiannual assessment period of 1996 so that capitalization of the SAIF is accomplished as soon as possible. As a result of this action, the SAIF assessment rate to be paid by institutions whose deposits are subject to assessment by the SAIF will continue to range from 23 cents per $100 of assessable deposits to 31 cents per $100 of assessable deposits, depending on risk classification.

Despite the general good health of the thrift industry, the SAIF is not in good condition and it remains significantly undercapitalized. On June 30, 1995, the SAIF had a balance of $2.6 billion, or about 37 cents in reserves for every $100 in insured deposits. An additional $6.3 billion would have been required on that date to fully capitalize the SAIF to its designated reserve ratio (DRR) of 1.25 percent of estimated insured deposits. As of September 30, 1995, the SAIF balance had grown to $3.1 billion, although the reserve ratio for that date cannot be determined until insured deposits as of September 30 become available in December. At the current pace, and under reasonably optimistic assumptions, the SAIF would not reach the statutorily mandated DRR until at least the year 2002. The failure of a single large SAIF-insured institution or several sizeable institutions or an economic downturn leading to higher than anticipated losses could render the fund insolvent. While the FDIC is not currently predicting such thrift failures, they are possible.

The main source of income for the SAIF is assessments. A sizable portion of the SAIF's ongoing assessments (up to $793 million annually) is diverted to meet interest payments on obligations of the Financing Corporation (FICO). Reducing assessment rates to the lowest minimum average rate permitted by law—18 basis points—is presently projected to delay SAIF capitalization until 2005, and it would cause a FICO shortfall as early as 1996. Moreover, there will still be a significant differential between assessment rates of the Bank Insurance Fund (BIF) and the SAIF even if the Board reduces the SAIF assessments to the minimum average allowed by statute.

II. Statutory Provisions Governing SAIF Assessment Rates

A. Section 7 of the Federal Deposit Insurance Act

Section 7(b) of the Federal Deposit Insurance Act (FDI Act) governs the Board's authority for setting assessments for SAIF members. 12 U.S.C. 1817(b). Section 7(b)(1) (A) and (C) require that the FDIC maintain a risk-based assessment system, setting assessments based on (1) the probable risk to the fund posed by each insured depository institution taking into account different categories and concentrations of assets and liabilities and any other relevant factors; (2) the likely amount of any such loss; and (3) the revenue needs of the fund. Section 7(b)(2)(A)(iii) further directs the Board to impose a minimum assessment on each institution not less than $1,000 semiannually. The Board must set semiannual assessments and the DRR for each deposit insurance fund independently. FDI Act section 7(b)(2)(B).

The Board must set semiannual assessments for SAIF members to maintain the reserve ratio at the DRR or, if the reserve ratio is less than the DRR, to increase the reserve ratio to the DRR. FDI Act section 7(b)(2)(A)(i). The reserve ratio is the dollar amount of the fund balance divided by estimated SAIF-insured deposits. The DRR for the SAIF is currently 1.25 percent of estimated insured deposits, the minimum level permitted by the FDI Act. In setting SAIF assessments to achieve and maintain the DRR, the Board must consider the SAIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on members' earnings and capital, and any other factors that the Board may deem appropriate. FDI Act section 7(b)(2)(D).

Before January 1, 1998, if the SAIF remains below the DRR, the total amount raised by semiannual assessments on SAIF members may not be less than the amount that would have been raised if section 7(b) as in effect on July 15, 1991 remained in effect. See FDI Act section 7(b)(2) (E) and (F). The minimum rate required by section 7(b) as then in effect was 0.18 percent.

Beginning January 1, 1998, all minimum assessment provisions applicable to BIF members also apply to SAIF members. Under these provisions, if the SAIF remains below the DRR, the total amount raised by semiannual assessments on SAIF members may not be less than the amount that would have been raised by an assessment rate of 0.23 percent. See FDI Act section 7(b)(2)(E).

The Board thus has the legal authority to reduce SAIF assessment rates to a minimum average of 18 basis points until January 1, 1998. Beginning January 1, 1998, however, the minimum average rate must be 23 basis points until SAIF achieves its DRR of 1.25 percent.

In setting semiannual assessments for members of the SAIF, beginning January 1, 1998, if the reserve ratio of the SAIF is less than the DRR, the Board must set semiannual assessments either, (a) at rates sufficient to increase the reserve ratio to the DRR within 1 year after setting the rates, *or* (b) in accordance with a schedule for recapitalization, adopted by regulation, that specifies target reserve ratios at semiannual intervals culminating in a reserve ratio that is equal to the DRR not later than 15 years after implementation of the schedule. FDI Act section 7(b)(3). Section 8(h) of the Resolution Trust Corporation Completion Act (RTCCA), Pub. L. No. 103–204, 107 Stat.2369, 2388, amended section 7(b)(3) to allow the Board, by regulation, to amend the SAIF capitalization schedule to extend the date by which the SAIF must be capitalized beyond the 15-year time limit to a date which the Board determines will, over time, maximize the amount of semiannual assessments received by the SAIF, net of insurance

losses incurred. FDI Act section 7(b)(3)(C).

Amounts assessed by the FICO against SAIF members must be subtracted from the amounts authorized to be assessed by the Board. FDI Act section 7(b)(2)(D).

In order to achieve SAIF capitalization, the Board adopted a risk-related assessment matrix in September 1992 (see Table 1) which has remained unchanged.

TABLE 1.—SAIF-MEMBER ASSESSMENT RATE SCHEDULE FOR THE SECOND SEMIANNUAL ASSESSMENT PERIOD OF 1995

[Basis points]

Capital group	Supervisory subgroup		
	A	B	C
Well capitalized	23	26	29
Adequately capitalized	26	29	30
Undercapitalized	29	30	31

B. Statutory Provisions Governing FICO Assessments

FICO was originated by section 302 of the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. No. 100–86, 101 Stat. 552, 585, which added section 21 to the Federal Home Loan Bank Act (FHLB Act).[1] FICO's assessment authority derives from section 21(f) of the FHLB Act, 12 U.S.C. 1441(f). As amended by section 512 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101–73, 103 Stat. 183, 406, section 21(f) requires that FICO obtain funding for ''anticipated interest payments, issuance costs, and custodial fees'' on FICO obligations from the following sources, in descending priority order: (1) FICO assessments previously imposed on savings associations under pre-FIRREA funding provisions; (2) ''with the approval'' of the FDIC Board, assessments against SAIF member institutions; and (3) FSLIC Resolution Fund (FRF) receivership proceeds not needed for the Resolution Funding Corporation (REFCORP) Principal Fund.

Under section 21(f)(2), FICO assessments against SAIF members are to be made in the same manner as FDIC insurance assessments under section 7 of the FDI Act. The amount of the FICO assessment—together with any amount assessed by REFCORP under section 21B of the FHLB Act—must not exceed the insurance assessment amount authorized by section 7.[2] Section 21(f)(2) further provides that FICO ''shall have first priority to make the assessment,'' and that the amount of the insurance assessment under section 7 is to be reduced by the amount of the FICO assessment. One important effect of the FICO assessment is to exacerbate any premium differential that may exist between BIF and SAIF assessment rates.

III. Problems Confronting the SAIF

A. Background: SAIF Assessment Rates

In deciding against changes in the SAIF assessment rate, the Board has considered the SAIF's expected operating expenses, case resolution expenditures and income under a range of scenarios. The Board also has considered the effect of an increase in the assessment rate on SAIF members' earnings and capital. When first adopted, the assessment rate schedule yielded a weighted average rate of 25.9 basis points. With subsequent improvements in the industry and the migration of institutions to lower rates within the assessment matrix, the average rate has declined to 23.7 basis points (based on risk-based assessment categories as of July 1, 1995 and the assessment base as of June 30, 1995—see Table 2).

TABLE 2.—SAIF ASSESSMENT BASE DISTRIBUTION SUPERVISORY AND CAPITAL RATINGS IN EFFECT JULY 1, 1995 DEPOSITS AS OF JUNE 30, 1995

[In billions]

Capital group		Supervisory subgroup					
		A		B		C	
Well capitalized	Number	1,529	86.1%	137	7.7%	24	1.4%
	Base	$611.1	83.6	$58.4	8.0	$17.0	2.3
Adequately capitalized	Number	22	1.2	30	1.7	26	1.5
	Base	$16.6	2.3	$18.3	2.5	$6.8	0.9
Under-capitalized	Number	0	0.0	0	0.0	7	0.4
	Base	$0.2	0.0	$0.0	0.0	$2.1	0.3

''Number'' reflects the number of SAIF members; ''Base'' reflects the SAIF-assessable deposits of SAIF members and of BIF-member Oakar banks.

The primary source of funds for the SAIF is assessment revenue from SAIF-member institutions. Since the creation of the fund and through the end of 1992, however, all assessments from SAIF-member institutions were diverted to other needs as required by FIRREA.[3] Only assessment revenue generated from BIF-member institutions that acquired SAIF-insured deposits under section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)) (so-called ''Oakar'' banks) was deposited in the SAIF throughout this period.

B. The SAIF is Significantly Undercapitalized

SAIF-member assessment revenue began flowing into the SAIF on January 1, 1993. However, the FICO has a priority claim on SAIF-member assessments in order to service FICO bond obligations. Under existing statutory provisions, FICO has assessment authority through 2019, the maturity year of its last bond issuance. At a maximum of $793 million per year, the FICO draw is substantial, and is expected to represent 45 percent of estimated assessment revenue for 1995,

[1] Title III of CEBA, entitled the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987, directed the Federal Home Loan Bank Board to charter FICO for the purpose of financing the recapitalization of the FSLIC by purchasing FSLIC securities (and, subsequently, securities issued by the FSLIC Resolution Fund as successor to FSLIC).

[2] The REFCORP Principal Fund is now fully funded and, accordingly, REFCORP's assessment authority has effectively terminated.

[3] From 1989 through 1992, more than 90 percent of SAIF assessment revenue went to the FRF, the REFCORP and the FICO.

or 11 basis points of the average assessment rate of 23.7 basis points.[4] The SAIF had a balance of $3.1 billion (unaudited) on September 30, 1995. With primary responsibility for resolving failed thrift institutions residing with the Resolution Trust Corporation (RTC) until June 30, 1995, there were few demands on the SAIF. The SAIF assumed resolution responsibility for failed thrifts from the RTC on July 1, 1995.

In addition to assessment revenue and investment income, there are other potential sources of funds for the SAIF as follows. First, the FDIC has a $30 billion line of credit available from the Department of the Treasury (Treasury) for deposit insurance purposes, on which no draws have been made to date. FDI Act section 14(a). The SAIF would be required to repay any amounts borrowed from the Treasury with revenues from deposit insurance premiums. As a condition of borrowing, the FDIC would be required to provide the Treasury with a repayment schedule demonstrating that future premium revenue would be adequate to repay any amount borrowed plus interest. FDI Act section 14(c).

Next, the RTCCA authorized the appropriation of up to $8 billion in Treasury funds to pay for losses incurred by the SAIF during fiscal years 1994 through 1998, to the extent of the availability of appropriated funds. In addition, at any time before the end of the 2-year period beginning on the date of the termination of the RTC, the Treasury is to provide out of funds appropriated to the RTC but not expended, such amounts as are needed by the SAIF and are not needed by the RTC. To obtain funds from either of these sources, however, certain certifications must be made to the Congress by the Chairman of the FDIC. FDI Act sections 11(a)(6)(D), (E) and (J). Among these, the Chairman must certify that the Board has determined that:

(1) SAIF members are unable to pay additional semiannual assessments at the rates required to cover losses and to meet the repayment schedule for any amount borrowed from the Treasury for insurance purposes under the FDIC's line of credit without adversely affecting the SAIF members' ability to raise capital or to maintain the assessment base; and

(2) An increase in assessment rates for SAIF members to cover losses or meet any repayment schedule could reasonably be expected to result in greater losses to the Government.

It may require extremely grave conditions in the thrift industry in order for the FDIC to certify that raising SAIF assessments would result in increased losses to the Government. Moreover, these funds cannot be used to capitalize the fund, that is, to provide an insurance reserve, which was the original purpose of requiring a 1.25 reserve ratio.

The RTC's resolution activities and the thrift industry's substantial reduction of troubled assets in recent years have resulted in a relatively sound industry as the SAIF assumed resolution responsibility. However, with a balance of $3.1 billion, the SAIF does not have a large cushion with which to absorb the costs of thrift failures. The FDIC has significantly reduced its projections of failed-thrift assets for the next two years, but the failure of a single large institution or several sizeable institutions or an economic downturn leading to higher than anticipated losses could render the fund insolvent. The FDIC's loss projections for the SAIF are discussed in more detail below.

C. Condition and Performance of SAIF-Member Institutions[5]

SAIF members earned $1.4 billion in the second quarter of 1995, compared to $1.2 billion in the first quarter. Average returns on assets (0.73 percent) and equity (9.23 percent) both increased from first-quarter levels, but SAIF members' average returns remain well below those of BIF members (1.14 percent ROA and 14.25 percent ROE). Despite a slight rise in loss provisions (up 1 percent), asset quality remains strong. Noncurrent loans and foreclosed real estate both declined from first-quarter levels, reducing the ratio of troubled assets to total assets from 1.18 percent to 1.12 percent. Reserve coverage of noncurrent loans improved slightly, from 84 cents for each dollar of noncurrent loans to 85 cents, and the equity-to-assets ratio also rose, from 7.88 percent on March 31 to 8.02 percent on June 30. SAIF members were slightly less reliant on deposits, which comprised 77.9 percent of their liabilities on June 30, down from 78.2 percent in the first quarter.

As of June 30, 1995, there were 1,774 members of the SAIF, including 1,696 savings institutions and 78 commercial banks. On this date, there were 54 SAIF-member ''problem'' institutions with total assets of $30 billion, compared to 73 institutions with $59 billion a year earlier. Two SAIF-member thrifts, with total assets of $456 million, failed during the first half of 1995. No SAIF members have failed since July 1, when the SAIF assumed resolution responsibility from the RTC.

A discussion of the improving condition of the SAIF-member thrift industry must be tempered by the higher risks the SAIF faces relative to the BIF. The SAIF has fewer members among which to spread risk and also has greater risks from geographic and product concentrations. The eight largest holders of SAIF-insured deposits, with a combined 18.5 percent of such deposits, all operate predominantly in California. By contrast, the eight largest holders of BIF-insured deposits operate in five different states and hold 10 percent of all BIF-insured deposits. The assets of SAIF members are heavily concentrated in residential real estate, largely due to statutory requirements that must be met to realize certain income tax benefits. While these investments entail relatively little credit risk, SAIF members generally are more exposed to interest-rate risk than BIF members.

D. Impact of a Premium Differential

The BIF achieved its statutorily required minimum reserve ratio of 1.25 percent during the second quarter of 1995, enabling the Board to lower BIF assessment rates. On August 8, 1995, the Board adopted an assessment rate schedule for the BIF ranging from 4 to 31 basis points, compared to a range of 23 to 31 basis points under the earlier BIF schedule and the current SAIF schedule. The Board has decided to decrease BIF rates further, to a range of 0 to 27 basis points, based on the continuing strength of the commercial banking industry and low near-term loss expectations. A notice concerning the BIF assessment rate schedule is published elsewhere in this Federal Register.

Under the current BIF and SAIF assessment rate schedules, average SAIF rates are 23 basis points higher than average BIF rates. It is likely that for the next seven years SAIF rates will remain significantly higher than BIF rates, until the SAIF is capitalized. After capitalization, SAIF rates will continue to be at least 11 basis points higher until the FICO bonds mature in 2017 to 2019, assuming the Board sets SAIF assessment rates to cover FICO's needs. If BIF members pass along most of their assessment savings to their customers, SAIF members may be forced to pay more for deposits or charge less for

[4] The FICO has an annual call on up to the first $793 million in SAIF assessments until the year 2017, with decreasing calls for two additional years thereafter. With interest credited for early payment, the actual annual draw is expected to approximate $780 million.

[5] Excluding one self-liquidating savings institution and RTC conservatorships. The final RTC conservatorship was resolved during the second quarter, prior to June 30.

loans to remain competitive. For SAIF members, this could result in reduced earnings and an impaired ability to raise funds in the capital markets. An analysis of a five-year time span suggests that any increase in failures attributable solely to an average 23-basis point differential is likely to be sufficiently small as to be manageable by the SAIF under current interest-rate and asset-quality conditions. The analysis also indicates that under harsher than assumed interest-rate and asset-quality conditions, these economic factors would have a significantly greater effect on SAIF-member failure rates than would a 23-basis point premium differential by itself. Among the weakest SAIF members, the differential could be as high as 31 basis points, possibly resulting in competitive pressures that cause additional failures. However, analysis showed that, apart from institutions that have already been identified by the FDIC's supervisory staff as likely failures, the wider spread is likely to have a minimal impact in terms of additional failures.

Nevertheless, the Board recognizes that a premium differential between BIF- and SAIF-insured institutions is likely to increase competitive pressures on thrifts and impede their ability to generate capital both internally and externally.[6] The Board recognizes that an ongoing premium disparity of 23 basis points provides powerful incentives to reduce SAIF-assessable deposits. This could be readily accomplished in a number of ways, with implications both for the ability of SAIF members to fund FICO interest payments, discussed in the following section, and for the structural soundness of the SAIF. A sharp decline in membership and the assessment base would also render the SAIF less effective as a loss-spreading mechanism for insurance purposes by exacerbating the concentration risks the fund already faces.

E. The Ability of the SAIF to Fund FICO

Under law, SAIF assessments paid by BIF-member Oakar banks are deposited in the SAIF and are not subject to FICO draws.[7] Further, SAIF assessments paid by any former savings association that (i) Has converted from a savings association charter to a bank charter, and (ii) remains a SAIF member in accordance with section 5(d)(2)(G) of the FDI Act (12 U.S.C. 1815(d)(2)(G)) (a so-called ''Sasser'' bank), are likewise not subject to assessment by FICO.[8] On June 30, 1995, BIF-member Oakar banks held 27.8 percent of the SAIF assessment base, and SAIF-member Sasser banks held an additional 7.5 percent (see Table 3).

TABLE 3.—PERCENTAGE DISTRIBUTION OF THE SAIF ASSESSMENT BASE

	Available to FICO	Not available to FICO			
		Oakar	Sasser	Subtotal	Total
12/89	99.8	0.2	0.0	0.2	100.0
12/90	95.8	3.9	0.3	4.2	100.0
12/91	89.9	8.7	1.5	10.1	100.0
12/92	85.9	10.3	3.8	14.1	100.0
12/93	74.7	19.4	5.9	25.3	100.0
12/94	67.3	25.4	7.3	32.7	100.0
6/95	64.7	27.8	7.5	35.3	100.0

While the pace of Oakar acquisitions slowed as RTC resolution activity wound down, Oakar acquisitions may continue and become an even greater proportion of the SAIF assessment base.[9] This has the potential result of the SAIF having insufficient assessments to cover the FICO obligation at current assessment levels. The rate of Sasser conversions is difficult to predict and is partially dependent on state laws, but any future conversions would also decrease the proportion of SAIF assessment revenues available to FICO.

In addition to the growth of the Oakar/Sasser portion of the SAIF assessment base, the ability of the SAIF to fund FICO interest payments will be adversely affected by the premium differential. Despite the current moratorium on the transfer of deposits between funds, many alternatives are available to SAIF-insured institutions seeking to reduce their SAIF-assessable deposits.[10] These institutions could decrease their SAIF assessments by shifting their funding to nondeposit liabilities, such as Federal Home Loan Bank advances and reverse repurchase agreements; by securitizing assets; or by changing business strategies, such as choosing to become a mortgage bank. Lastly, SAIF-insured institutions and their parent companies could structure affiliate relationships that facilitate the ''migration'' of deposits from a SAIF-insured institution to a BIF-insured affiliate. At least a dozen large organizations have already filed applications seeking to establish affiliate relationships for this apparent purpose. Moreover, more than 100 bank and thrift holding companies with both BIF- and SAIF-member affiliates already have the means in place.

These strategies to reduce reliance on SAIF-insured deposits could rapidly deplete the SAIF assessment base to the point where the assessment base is not large enough to generate sufficient revenue to cover the FICO obligation. This would occur with a 20 percent reduction in the current SAIF assessment base, and it is not unreasonable to expect a decline of that magnitude.

[6] *See The Condition of the BIF and the SAIF and Related Issues,* Testimony of Ricki Helfer, Chairman, FDIC, before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Banking and Financial Services, U.S. House of Representatives, Attachment C entitled ''Analysis of Issues Confronting the Savings Association Insurance Fund,'' March 23, 1995.

[7] See Notice of FDIC General Counsel's Opinion No. 7, 60 FR 7055 (Feb. 6, 1995).

[8] *Id.*

[9] SAIF-assessable deposits held by BIF-member Oakar banks will continue to grow at the same rate as the Oakar bank's overall deposit base. Under section 5(d)(3) of the FDI Act, as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), such deposits are adjusted annually by the acquiring institution's overall deposit growth rate (excluding the effects of mergers or acquisitions).

[10] *The Condition of the SAIF and Related Issues,* Testimony of Ricki Helfer, Chairman, FDIC, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Attachment A entitled ''The Immediacy of the Savings Association Insurance Fund Problem,'' July 28, 1995. *The Condition of the SAIF and Related Issues,* Testimony of Ricki Helfer, Chairman, FDIC, before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Banking and Financial Services, U.S. House of Representatives, Attachment A entitled ''The Immediacy of the Savings Association Insurance Fund Problem,'' August 2, 1995.

With two insurance funds providing essentially the same product at significantly different prices, it must be expected that purchasers will seek the lower price. Attempts to control this behavior through legislation or regulation are likely to be ineffective and may only result in companies finding less efficient means. A legislated reversal of the Oakar/Sasser exemption would only defer a FICO shortfall because the existence of a significant, prolonged premium differential is likely to result in continued erosion of the SAIF assessment base.

F. Failed-Asset Estimates for the SAIF

Among the factors that affect the ability of the SAIF to capitalize and to meet the FICO assessment are the number of thrift failures and the dollar amount of failed assets going forward.

Estimates of failed-institution assets are made by the FDIC's interdivisional Bank and Thrift Failure Working Group. In September 1995, the Working Group estimated failed thrift assets of $50 million for the fourth quarter of 1995, $1 billion for 1996 and $4.5 billion for the first nine months of 1997. For loss projections beyond September 1997, the assumed failed-asset rate for the SAIF was 22 basis points, or about $2 billion per year.

In the FDIC's projections, banks and thrifts were assumed to face similar longer-run loss experience. The BIF's historical average failed-asset rate from 1974 to 1994 was about 45 basis points. However, a lower failure rate than the recent historical experience of the BIF was assumed because the thrift industry is relatively sound following the RTC's removal of failing institutions from the system, and the health and performance of the remaining SAIF members has improved markedly. As of June 30, 1995, 86 percent of all SAIF-member institutions were in the best risk classification of the FDIC's risk-related premium matrix.

One of the purposes of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) was to minimize losses to the insurance funds. FDICIA increased regulatory oversight and emphasized capital. Specifically, FDICIA requires the closing of failing institutions prior to the full depletion of their capital, limits riskier activities by institutions that are less than adequately capitalized, and establishes audit standards and statutory time frames for examinations. The law also requires the implementation of risk-related assessments, which have provided effective incentives for institutions to achieve and maintain the highest capital and supervisory standards. In light of these provisions, the high levels of thrift failures and insurance losses experienced over the past decade must be tempered when considering the industry's near-term future performance.

G. Projections for the SAIF

The FDIC currently projects that, under reasonably optimistic assumptions, the SAIF is not likely to reach the statutorily mandated DRR of 1.25 percent until 2002. Also, projections indicate the fund will not encounter problems meeting the FICO obligation through 2004.

It is important to note that the baseline assumptions underlying these projections foresee shrinkage in the non-Oakar portion of the SAIF assessment base of 2 percent per year. If thrifts react aggressively to the premium differential and reduce their SAIF-assessable deposits, as discussed in Section IV.E, substantially greater shrinkage may occur. Under higher rates of shrinkage, the SAIF is likely to capitalize prior to 2002 because a lower level of insured deposits would require a smaller fund to meet the DRR; however, FICO interest payments could be jeopardized within a year or two.

As stated earlier, the Board has the authority to reduce SAIF assessment rates to a minimum average of 18 basis points until January 1, 1998, at which time the average rate would rise to 23 basis points until capitalization occurs. Projections made under this scenario (and using the other baseline assumptions) indicate that the SAIF would capitalize in 2005, or three years later than under the existing rate schedule. Perhaps more importantly, reduction of the SAIF assessment rate to 18 basis points is expected to cause a FICO shortfall in 1996.

IV. Suggested Legislative Initiatives

Congress is considering a number of legislative proposals to resolve the difficulties facing the SAIF. Most of these proposals are intended to bring about the capitalization of the SAIF early in 1996 and expand the assessment base for the FICO obligation. Pending enactment of a comprehensive, legislative resolution to the difficulties facing the SAIF, however, the FDIC must comply with current statutory mandates.

As discussed above, the law provides that if the reserve ratio is less than the DRR, the Board must set semiannual assessments for SAIF members to increase the reserve ratio to the DRR. FDI Act section 7(b)(2)(A)(i). In setting SAIF assessments to achieve and maintain the current DRR of 1.25 percent, the Board must consider the SAIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on members' earnings and capital, and any other factors that the Board may deem appropriate. FDI Act section 7(b)(2)(D). Given the uncertainty underlying the current legislative process and the range of possible solutions, it would be inappropriate to base the assessment rate for the first semiannual period of 1996 on what Congress may or may not do. Should legislation affecting the SAIF finally be enacted, the FDIC will promptly consider its impact and take any action deemed necessary or appropriate regarding assessment rates in accordance with the new legislative mandates.

V. Board Resolution

For the reasons outlined above, the Board has adopted a Resolution to retain the existing assessment rate schedule applicable to SAIF-member institutions for the first semiannual assessment period of 1996. The text of the Resolution is set out below.

Resolution

Whereas, section 7(b) of the Federal Deposit Insurance Act (''FDI Act'') requires the Board of Directors (''Board'') of the Federal Deposit Insurance Corporation (''FDIC'') to establish by regulation a risk-based assessment system; and

Whereas, section 7(b) of the FDI Act requires the Board to set semiannual assessments for Savings Association Insurance Fund (''SAIF'') members to maintain the reserve ratio of SAIF at the designated reserve ratio (''DRR'') or, if the reserve ratio is less than the DRR, to increase the reserve ratio to the DRR; and

Whereas, the DRR for the SAIF is currently 1.25 percent of estimated insured deposits, the minimum level permitted by the FDI Act; and

Whereas, section 7(b) further requires that, in setting SAIF assessments to achieve and maintain the reserve ratio of SAIF at the DRR, the Board consider the following factors: (1) Expected operating expenses; (2) case resolution expenditures and income; (3) the effect of assessments on members' earnings and capital; and (4) any other factors the Board may deem appropriate; and

Whereas, the Board has considered the factors specified in the FDI Act, as reflected in the attached Federal Register notice document; and

Whereas, Part 327 of the rules and regulations of the FDIC, 12 C.F.R. Part 327, entitled ''Assessments,'' prescribes

the rules governing the assessment of institutions insured by the FDIC; and

Whereas, paragraph 327.9(c)(1) of title 12 of the C.F.R. prescribes the assessment rate schedule applicable to members insured by the SAIF; and

Whereas, based upon its semiannual review of the SAIF capitalization schedule and assessment rates for SAIF-insured institutions, the Board finds that it is appropriate to retain the existing assessment rate schedule applicable to members of the SAIF with the result that the SAIF assessment rates to be paid by depository institutions whose deposits are subject to assessment by the SAIF will continue to range from 23 cents per $100 of assessable deposits to 31 cents per $100 of assessable deposits, depending on risk classification.

Now, therefore, be it resolved, that the existing assessment rate schedule applicable to members of the SAIF shall be retained for the first semiannual assessment period of 1996 from January 1, 1996, through June 30, 1996.

Be it further resolved, that the Board hereby directs the Executive Secretary, or his designee, to cause the aforementioned Federal Register notice document to be published in the Federal Register in a form and manner satisfactory to the Executive Secretary, or his designee, and the General Counsel, or his designee.

By the order of the Board of Directors.

Dated at Washington, D.C., this 14th day of November, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–28720 Filed 12–8–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–26–AD; Amendment 39–9442; AD 95–24–12]

Airworthiness Directives; Jetstream Aircraft Limited Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) Model 3201 airplanes. This action requires repetitively inspecting the main landing gear (MLG) bay forward lower edge wing skin structure for cracks, replacing any cracked doubler with a joggled doubler of improved design to reinforce the area and prevent future cracking, and eventually incorporating these doublers on all affected airplanes. Cracking found at the MLG bay forward lower edge wing skin structure during fatigue testing of the JAL Model 3201 prompted this action. The actions specified by this AD are intended to prevent the MLG bay forward lower edge wing skin structure from cracking, which, if not detected and corrected, could cause failure of the wing structure and loss of control of the airplane.

DATES: Effective January 17, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–26–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 508.2715; facsimile (322) 230.6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Jetstream Aircraft Limited (JAL) Model 3201 airplanes was published in the Federal Register on August 14, 1995 (60 FR 41868). The action proposed to require repetitively inspecting the main landing gear (MLG) bay forward lower edge wing skin structure for cracks, replacing any cracked doubler with a joggled doubler of improved design to reinforce the area and prevent future cracking, and eventually incorporating these doublers on all affected airplanes. Accomplishment of the proposed action would be in accordance with Jetstream Service Bulletin (SB) 57–A–JA920540; Original Issue September 1, 1992.

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

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

The FAA estimates that 134 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 35 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owners/operators. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $281,400. This figure is based on the assumption that all of the affected airplanes do not have the new joggled doublers installed and that none of the owners/operators of the affected airplanes have replaced the doublers. The FAA has no way of determining the number of repetitive inspections an owner/operator may incur.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy

of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AD No. 95–24–12. Jetstream Aircraft Limited: Amendment 39–9442; Docket No. 95–CE–26–AD.

Applicability: Model 3201 Airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the main landing gear (MLG) bay forward lower edge wing skin structure from cracking, which, if not detected and corrected, could cause failure of the wing structure and loss of control of the airplane, accomplish the following:

(a) Upon accumulating 4,000 hours time-in-service (TIS) or within the next 200 hours TIS after the effective date of this AD, whichever occurs later, inspect the MLG bay forward lower edge wing skin structure adjacent to the main spar for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 57–A–JA920540, Original Issue September 1, 1992.

(1) If cracks are found, prior to further flight, replace the existing doublers with joggled doublers of improved design in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–A–JA920540, Original Issue September 1, 1992.

(2) If no cracks are found, re-inspect the MLG bay forward lower edge wing skin structure at intervals not to exceed 600 hours TIS until modified as specified in paragraph (b) of this AD.

(b) Upon accumulating 9,000 hours TIS or within the next 200 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished as specified in paragraph (a)(1) of this AD, replace the existing doublers with joggled doublers of improved design in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–A–JA920540.

(c) Replacing the joggled doublers as required by paragraph (a)(1) or (b) of this AD eliminates the repetitive inspection requirements of this AD.

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

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

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

(f) The inspection and modification required by this AD shall be done in accordance with SB 57–A–JA920540, Original Issue September 1, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington DC 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(g) This amendment (39–9442) becomes effective on January 9, 1996.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30133 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–145–AD; Amendment 39–9455; AD 95–25–09]

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires that certain flight control computers be modified so that the autopilot will disengage when the airplane is in the ''go-around'' mode under certain conditions. This amendment is prompted by an accident in which the flight crew may have initiated an inadvertent go-around which, following several subsequent actions by the crew and automated system, placed the airplane in a severe out-of-trim condition. The actions specified by this AD are intended to prevent an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which may severely reduce controllability of the airplane.

EFFECTIVE DATE: Effective January 10, 1996.

ADDRESSES: Information concerning this AD may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the Federal Register on October 17, 1994 (59 FR 52273). That action proposed to require modification of flight control computers (FCC's) having part numbers (P/N's) B216ABM6, B350AAM1, B350AAM2, and B350AAM3 (for Model A310 series airplanes); and P/N's B297AAM3, B297AAM4, and B297AAM5 (for Model A300–600 series airplanes).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

Two commenters support the proposed rule.

One commenter points out that the Discussion section of the preamble to the notice incorrectly stated that ''the flight crew may have attempted a go-around while the airplane was in an out-of-trim condition.'' The commenter asserts that the subject airplane was correctly trimmed prior to the accident. The FAA acknowledges that the event that prompted the AD could be described more accurately. Therefore, the FAA has revised the Summary section and the statement of unsafe condition in the final rule.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

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

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

The FAA estimates that 15 Model A310 series airplanes and 36 Model A300–600 series airplanes of U.S. registry will be affected by this AD.

Since the manufacturer has not yet developed one specific modification commensurate with the requirements of this AD, the FAA is unable at this time to provide specific information as to the number of work hours or cost of parts that would be required to accomplish the required modification. A further problem in developing a specific cost estimate is the fact that modification costs are expected to vary from operator to operator and from airplane to airplane depending upon airplane configuration. The compliance time of 24 months should provide ample time for the development, approval, and installation of an appropriate modification.

However, based on similar modifications accomplished previously on other FCC's installed on other airplane models, the FAA can reasonably estimate that the required modification may require as few as 2 work hours or as many as 50 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts could range from a negligible amount to as much as $1,500 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $6,120 ($120 per airplane) and $229,500 ($4,500 per airplane).

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–25–09 Airbus Industrie: Amendment 39–9455. Docket 94–NM–145–AD.

Applicability: Model A310 series airplanes equipped with flight control computers (FCC) having part number (P/N) B216ABM6, B350AAM1, B350AAM2, or B350AAM3; and Model A300–600 series airplanes equipped with FCC's having P/N B297AAM3, B297AAM4, or B297AAM5; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which may severely reduce controllability of the airplane, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the FCC's in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) As of 24 months after the effective date of this AD, no person shall install an FCC having P/N B216ABM6, B350AAM1, B350AAM2, or B350AAM3 on any Model A310 series airplane; and P/N B297AAM3, B297AAM4, or B297AAM5 on any Model A300–600 series airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

(e) This amendment becomes effective on January 10, 1996.

Issued in Renton, Washington, on December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30134 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–219–AD; Amendment 39–9454; AD 95–20–04 R1]

Airworthiness Directives; Lockheed Model L–1011–385–1 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385–1 series airplanes, that currently requires implementation of a Supplemental Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair, if necessary, to ensure continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. That AD originally was prompted by a structural re-evaluation by the manufacturer that identified certain structural details where fatigue damage is likely to occur. The actions specified in that AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes. This amendment corrects the compliance time for the initial inspection of each structurally significant detail (SSD).

DATES: Effective November 2, 1995.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of November 2, 1995 (60 FR 51713, October 3, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On September 20, 1995, the FAA issued AD 95–20–04, amendment 39–9382 (60 FR 51713, October 3, 1995), applicable to all Lockheed Model L–1011–385–1 series airplanes. That AD requires implementation of a Supplemental Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair, if necessary, to ensure continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. That action was prompted by a structural re-evaluation by the manufacturer that identified certain structural details where fatigue damage is likely to occur. The actions required by that AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

Since the issuance of that AD, the FAA has received communications from an affected operator indicating confusion about the compliance time for accomplishing the inspections of each structurally significant detail (SSD). This operator points out that the AD specifies, first, that the inspections contained in the SID must be incorporated into the FAA-approved maintenance program within 12 months after the effective date of the AD. Second, the AD requires that the initial inspection of each SSD must be accomplished within one repeat interval after the effective date of the AD. The operator points out that this presents a problem in complying with the AD, since, in some cases, the initial inspection of an SSD may be required to be accomplished prior to the incorporation of the SID program into an operator's maintenance program.

The FAA has reviewed the compliance time specified in AD 95–20–04, and finds that it is indeed erroneous. It was the FAA's intent that the SID program be incorporated into the FAA-approved maintenance inspection program prior to the performance of any inspection contained in the SID. Therefore, the FAA has determined that it is appropriate to take action to correct paragraph (a)(1) of that AD to specify that the compliance time for performing the initial inspection of each SSD is within one repeat interval *measured from a date 12 months after November 2, 1995* (the effective date of the AD). The FAA finds that this change will not compromise safety and is consistent with what the FAA had originally intended.

Action is taken herein to correct the error and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date of the rule remains November 2, 1995.

The final rule is being reprinted in its entirety for the convenience of affected operators.

Since this AD merely corrects the compliance time for a previously-required action, it requires no additional work to be performed by affected operators. In light of this, the FAA has determined that it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9382 (60 FR 51713, October 3, 1995), and by adding

a new airworthiness directive (AD), amendment 39– , to read as follows:

95–20–04 R1 Lockheed: Amendment 39–9454. Docket 93–NM–219–AD. Revises AD 95–20–04, Amendment 39–9382.

Applicability: Model L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking that could compromise the structural integrity of these airplanes, accomplish the following:

(a) Within 12 months the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection(s) of the structurally significant details (SSD) defined in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994.

(1) The initial inspection for each SSD must be performed at the later of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD:

(i) Within one repeat interval measured from a date 12 months after the effective date of this AD; or

(ii) Prior to the threshold specified in the Lockheed Document for that SSD.

(2) A 10 percent deviation from the repetitive interval specified in the Lockheed Document for that SSD is acceptable to allow for planning and scheduling time.

(3) If the Lockheed Document specifies that inspection of any SSD be performed at every ''C'' check, those inspections must be performed at intervals not to exceed 5,000 hours time-in-service or 2,500 flight cycles, whichever occurs earlier.

(4) If the Lockheed Document specifies either the initial inspection or the repetitive inspection intervals for any SSD in terms of flight hours or flight cycles, the inspection shall be performed prior to the earlier of the terms (whichever occurs first on the airplane: either accumulated number of flight hours, or accumulated number of flight cycles).

(5) The non-destructive inspection techniques referenced in Appendix VI of the Lockheed Document provide acceptable methods for accomplishing the inspections required by this AD.

(b) If any cracking is found in any SSD, prior to further flight, repair in accordance with paragraph (b)(1), (b)(2), or (b)(3) of this AD.

(1) In accordance with the applicable service bulletin referenced in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994; or

(2) In accordance with the Structural Repair Manual; or

(3) In accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(c) Within 30 days after returning the airplane to service, subsequent to accomplishment of the inspection(s) specified in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994, submit a report of the results (positive or negative) of the inspection(s) to Lockheed in accordance with Section V., Data Reporting System (DRS), of the Lockheed Document. 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.

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

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

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

(f) The incorporation of the revision and reporting requirements shall be done in accordance with Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of November 2, 1995 (60 FR 51713, October 3, 1995). Copies may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment is effective on November 2, 1995.

Issued in Renton, Washington, on December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30132 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ACE–09]

Amendment to Class E Airspace; Council Bluffs, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Council Bluffs, IA to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at the Council Bluffs Municipal Airport. This action will provide for additional controlled airspace necessary for the GPS SIAP.

EFFECTIVE DATE: 0901 UTC, April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On October 3, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Council Bluffs, IA (60 FR 51747). The proposed action would provide additional controlled airspace to accommodate a GPS SIAP to runway 31 at the Council Bluffs Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) amends the Class E airspace area at Council Bluffs, IA, by providing additional controlled airspace for aircraft executing the GPS Runway 31 SIAP to the airport.

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

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 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 Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

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

* * * * *

ACE NE E5 Omaha, Eppley Airfield, NE [Revised]

Omaha, Eppley Airfield, NE
(Lat. 41°18′08″ N., long. 95°53′37″ W)
Offut AFB, NE
(Lat. 41°07′06″ N., long. 95°54′45″ W)
Council Bluffs Municipal Airport, IA
(Lat. 41°15′32″ W., long. 95°45′35″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Eppley Airfield and within 4.3 miles each side of the Eppley Airfield ILS localizer course to Runway 32L extending from the 6-mile radius to 13 miles southeast of the airport and within 4 miles northeast and 6 miles southwest of the Eppley Airfield ILS localizer course to Runway 14R extending from the 6-mile radius to 15.3 miles northwest of the airport and within a 6-mile radius of the Offutt AFB and within 4.3 miles each side of the Offutt ILS localizer course extending from the 6-mile radius to 7.4 miles southeast of the AFB and within a 6.3 mile radius of Council Bluffs Municipal Airport excluding that portion which lies within the Eppley Airfield and the Offutt AFB Class E5 airspace.

* * * * *

Issued in Kansas City, MO on November 28, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–30099 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28403; Amdt. No. 1699]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington; DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal, Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal

Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on December 1, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

****Effective JAN 04, 1996*

Madera, CA Madera Muni, VOR or GPS RWY 30, Amdt 9 CANCELLED
Madera, CA Madera Muni, VOR RWY 30, Amdt 9
Webster City, IA, Webster City Muni, NDB or GPS RWY 32, Amdt 7 CANCELLED
Webster City, IA, Webster City Muni, NDB RWY 32, Amdt 8
Augusta, KS, Augusta Muni, VOR/DME RNAV or GPS RWY 36, Orig-A CANCELLED
Augusta, KS, Augusta Muni, VOR/DME RNAV RWY 36, Orig-A
Olathe, KS, Johnson County Executive, VOR or GPS RWY 35, Amdt 10 CANCELLED
Olathe, KS, Johnson County Executive, VOR RWY 35, Amdt 10
Eastport, ME, Eastport Muni, NDB or GPS RWY 15, Orig CANCELLED
Eastport, ME, Eastport Muni, NDB RWY 15, Orig
Harrisonville, MO, Lawrence Smith Memorial, VOR/DME or GPS RWY 35, Orig CANCELLED
Harrisonville, MO, Lawrence Smith Memorial, VOR/DME RWY 35, Orig
Omaha, NE, Millard, VOR/DME RNAV or GPS RWY 12, Amdt 6 CANCELLED
Omaha, NE, Millard, VOR/DME RNAV RWY 12, Amdt 6
Sidney, NE, Sidney Muni, VOR/DME OR TACAN or GPS RWY 30 Amdt 4 CANCELLED
Sidney, NE, Sidney Muni, VOR/DME OR TACAN RWY 30 Amdt 4
Clinton, OK, Clinton-Sherman, NDB or GPS RWY 17R, Amdt 10 CANCELLED
Clinton, OK, Clinton-Sherman, NDB RWY 17R, Amdt 10
Pauls Valley, OK, Pauls Valley Muni, NDB or GPS RWY 35, Amdt 2 CANCELLED
Pauls Valley, OK, Pauls Valley Muni, NDB RWY 35, Amdt 3
Gainesville, TX, Gainesville Muni, NDB or GPS RWY 17, Amdt 8 CANCELLED
Gainesville, TX, Gainesville Muni, NDB RWY 17, Amdt 8

[FR Doc. 95–30098 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–33–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 124 and 270

[FRL–5319–4 RIN 2050–AD97]

RCRA Expanded Public Participation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing new regulations under the Resource Conservation and Recovery Act (RCRA). The new regulations will improve the process for permitting facilities that store, treat, or dispose of hazardous wastes by providing earlier opportunities for public involvement in the process and expanding public access to information throughout the permitting process and the operational lives of facilities.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC) located at 1235 Jefferson Davis Highway, Arlington VA. The Docket Identification Number is F–95–PPCF–FFFFF (the docket number for the proposed rule is F–94–PPCP–FFFFF). The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rulemaking, contact Patricia Buzzell, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8632, email address buzzell.tricia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Access

An abstract and fact sheet on this rule are available on the Internet. Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov

Dial-up: (919) 558–0335.

From the main EPA Gopher menu, select: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/ Hazardous Waste/Permits and Permitting.

FTP: ftp.epa.gov
Login: anonymous
Password: Your Internet address

Files are located in /pub/gopher/ OSWRCRA

Preamble Outline

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  B. Shortcomings of the Current Program
  C. How Today's Rule will Improve the Program
  D. The Rule: From Proposal to Final
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V. State Authority
  A. Applicability of Today's Rule in Authorized States
  B. Schedules and Requirements for Authorization
VI. Permits Improvement Team
VII. Regulatory Assessment Requirements
  A. Executive Order 12866
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. Unfunded Mandates Reform Act
  E. Enhancing the Intergovernmental Partnership

I. Statutory Authority

EPA is issuing these regulations under the authority of sections 2002, 3004, 3005 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

II. Background

A. Overview of the RCRA Permitting Program

In RCRA, Congress gave EPA the authority to write regulations, or ''rules,'' to govern, among other things, the permitting of hazardous waste management facilities. EPA is issuing today's regulations to enhance public participation in the hazardous waste facility permitting process.

Under RCRA, EPA is responsible for regulating the ''cradle to grave'' management of hazardous wastes. Hazardous wastes come in many shapes and forms. They may be liquids, solids, or sludges. They may be the by-products of manufacturing processes, or simply commercial products—such as household cleaning fluids or battery acid—that have been discarded. EPA determines if wastes are hazardous by judging, among other things, the characteristics of the wastes and their potential to cause harm to human health and the environment when not properly managed. RCRA regulations identify hazardous wastes based on their characteristics and also provide a list of specific hazardous wastes (refer to 40 CFR 261 for more information). To manage hazardous waste in an environmentally sound manner, companies often need to store it, treat it (for instance, by burning it or mixing it with stabilizing chemicals), and/or dispose of it into specially built landfills. In most cases, a business that stores, treats, or disposes of hazardous waste, needs a permit under RCRA.

Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous wastes to comply with standards that are ''necessary to protect human health and the environment.'' EPA or EPA-authorized States implement these standards by issuing RCRA permits to facilities that treat, store, or dispose of hazardous wastes. In some circumstances, existing facilities may continue to operate without a full RCRA permit under the ''interim status'' provision of RCRA § 3005(e). In RCRA, Congress gave EPA broad authority to provide for public participation in the RCRA permitting process. Section 7004(b) of RCRA requires EPA to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under the Act.

Under RCRA section 3006, States may seek EPA authorization to administer and enforce the RCRA program in lieu of EPA. Once a State adopts today's rule and receives EPA authorization for the rule, the State will become the primary implementor of the rule (see Section V. below for more information). In today's preamble, we refer to the primary implementing agency for this rule as ''the permitting agency'' or ''the agency.'' ''The Director'' refers to the head of the primary implementing agency. We refer to EPA as ''EPA'' or ''the Agency.''

B. Shortcomings of the Current Program

Many stakeholders have expressed the concern that the current RCRA permitting process does not involve the public at an early stage in the process, does not provide adequate information, and does not provide an equitable opportunity to participate. EPA is responding to these concerns in today's rule. In fact, EPA has emphasized the need for more public involvement in all its activities. The Agency's Hazardous Waste Minimization and Combustion Strategy calls for the development of mechanisms to ensure that local communities are fully informed about the RCRA decision-making process and have an opportunity to participate in that process. Recommendations from the National Performance Review, the RCRA Implementation Study, and the Permits Improvement Team have all emphasized the need for expanded public participation in permitting. A number of sources outside the Agency (e.g., environmental groups, and business trade associations) have also supported enhanced public participation.

C. How Today's Rule Will Improve the Program

Today's final rule will require a prospective applicant to hold an informal public meeting before submitting an application for a RCRA permit. Also, the regulations will require the applicant to advertise the meeting in the newspaper, through a broadcast announcement (e.g., by radio or television), and on a sign posted at or near the property. This meeting will provide a chance for the community to interact with and provide input to a facility owner or operator before the owner or operator submits a permit application. The rule also directs the permitting agency to mail a notice to interested people when the facility submits its application. The notice will tell members of the public where they can examine the application at the same time that the agency reviews it.

In some cases, RCRA permits can be the subject of intense debate. When permits raise a lot of public interest, the public's demand for information increases. Today's rule will give the permitting agency the authority to require a facility owner or operator to set up an information repository at any time during the permitting process or the permit life. We anticipate that agencies will use this authority only in those permitting cases that raise a lot of public interest, or in other cases where the public needs more access to information. The repository will hold all information and documents that the permitting agency decides are necessary to fulfill the purposes for which the repository was established. Finally, today's rule will require combustion facilities (i.e., incinerators and other

facilities that burn hazardous wastes) to notify the public before they hold a trial burn.[1]

EPA anticipates that these regulations will provide an opportunity for the public to participate earlier in the permitting process. In addition, the rule will give the public increased access to facility and permitting information. Finally, we hope that the rule will help people become involved in the permitting process and increase understanding of hazardous waste management facilities.

D. The Rule: From Proposal to Final

EPA proposed the RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures rule on June 2, 1994 (59 FR 28680–28711). The proposed rule contained changes and additions to the RCRA public participation regulations (40 CFR 124) and RCRA Subtitle C permitting regulations (40 CFR 270).

Today, EPA is finalizing the public participation portion of the proposal (with a number of changes in response to comments received by the Agency during the comment period for the proposed rule—see Section IV below), which includes changes to both Parts 124 and 270. The Agency is not finalizing the proposed revisions to combustion permitting procedures at this time.

EPA decided to separate the two portions for a number of reasons. First, the public comments on the proposed rule were more favorable towards the public participation changes. On the other hand, the commenters were less satisfied with the proposed combustion permitting changes, particularly those changes regarding the trial burn. The Agency is currently considering and addressing the commenters' concerns on the proposed combustion permitting changes. In the meantime, EPA sees no reason to delay the important changes to the public participation provisions.

Moreover, EPA is committed to issuing comprehensive emissions standards for combustion facilities under RCRA and the Clean Air Act. The Agency anticipates issuing a proposed rule on these standards in the fall of 1995. Due to potential overlap between the procedures in the emissions standards proposed rule and the combustion permitting procedures in the June 2, 1994 proposed rule, EPA has decided to take more time to consider the permitting provisions in the June 2 proposal. We intend to find the best possible solution to coordinate these two rulemakings.

Finally, EPA realized that the proposed rule may have caused some confusion. A few commenters pointed to the different character of the public participation changes and the combustion permitting changes. The commenters expressed concern over combining these two dissimilar portions in the same rule. Moreover, a number of commenters seemed to be confused over the applicability of the rule. In particular, since the combustion permitting provisions would apply only to combustion facilities, and the proposed rule was an outgrowth of the Combustion Strategy, a number of commenters seemed confused over the applicability of the public participation procedures to all RCRA TSDFs.

III. Applicability of Today's Rule

Today's rule promulgates changes and additions to Parts 124 and 270 in the Code of Federal Regulations (CFR). The Part 124 changes, which include new and earlier public involvement steps and procedures, apply to every facility that has or is seeking a RCRA subtitle C permit to treat, store, or dispose of hazardous waste, unless exempted under a specific section. The changes to Part 270, in §§ 270.2, 270.14, and 270.30, also apply to every facility. The changes to §§ 270.62 and 270.66, however, apply only to combustion facilities.

The rule does not require RCRA facilities that are already involved in the permitting process to step back in the process to comply with the new requirements. Instead, the rule will apply to a facility according to what stage of the process the facility is in when the rule becomes effective. For instance, if a facility has submitted its part B permit application before the effective date of this rule, then the rule does not require the facility to hold a pre-application meeting under § 124.31. This facility would, however, have to comply with all requirements relating to steps in the permitting process that it has not yet undertaken.

IV. Review of Public Comments, Responses, and Changes From the Proposed Rule

The following (IV. A through E) is a section-by-section summary of the most significant comments on the proposed rule, EPA's responses to those comments, and an explanation of any changes from the proposed rule to the final. All of the public comments and EPA's comprehensive response to comments document on this rulemaking are available through the RCRA Docket (see the paragraph entitled **ADDRESSES**, above).

The most significant changes in the final rule involve our decision to use guidance, instead of rule language, to encourage facilities to strive toward some of the important goals in the proposed rule. EPA recognized in the proposal that some of the proposed regulatory provisions were very general and requested comment on how they could be effectively implemented (see, e.g., 59 FR 28702). In response, commenters argued that several portions of the proposed regulatory language were vague and would spawn disputes, controversy, and litigation. The commenters suggested that EPA relocate some of the proposed regulatory text to the preamble as guidance.

EPA found these comments persuasive in certain instances. The development of today's rule has, from the start, involved a balance between promoting broader, more equitable public participation while maintaining the flexibility for individual permit writers, facilities, and communities to adopt the most appropriate, site-specific approach consistent with the principles of fairness and openness. Some of the principles underlying the proposed and final rules are inherently difficult to prescribe through regulation. For example, it is possible to require an applicant to hold a meeting; it is much more difficult to require through regulation that the meeting be conducted in an equitable fashion, since the steps required to accomplish this objective will necessarily vary from situation to situation. Although the final rule retains most of the proposed regulatory changes, EPA concluded that, in certain instances, the need to maintain flexibility is inconsistent with a national regulatory approach. In these instances, as explained more fully in the sections below, EPA has decided to proceed by using guidance, rather than regulations, to encourage facilities to adopt and strive towards a number of the goals in the proposed rule. The Agency will provide some guidance in today's preamble; however, we also anticipate releasing a guidance document, in the near future, to help permitting agencies and facilities to implement today's rule.

The Agency believes that facility owners, State environmental agencies, tribes, and private citizens are often in the best position to determine what modes of communication and

[1] The owner or operator of a combustion unit must conduct a trial burn as part of the permitting process for a combustion unit. The trial burn is a demonstration period held by the owner or operator of a combustion unit to test the unit's ability to meet the regulatory performance standards for treatment of hazardous wastes. The permitting agency uses the results of the trial burn to establish operating conditions in the RCRA permit.

participation will work best in their communities. The final rule provides the flexibility necessary to find the best local solutions to ensure equal opportunities for all members of the community.

A. Equitable Public Participation and Environmental Justice

Proposed § 124.30 and Preamble. In section 124.30 of the proposed rule, entitled ''Equitable Public Participation,'' EPA proposed to require facilities and permitting agencies to ''make all reasonable efforts'' to ensure equal opportunity for the public to participate in the permitting process. The proposed rule language defined ''reasonable efforts'' as including the use of multilingual fact sheets and interpreters at meetings and hearings, when the ''affected community contains a significant non-English speaking population.''

In the preamble to the proposed rule (see 59 FR 28686), EPA solicited comments on several key environmental justice issues for the RCRA permitting program: (1) The siting of hazardous waste facilities; (2) the manner in which EPA should respond when confronted with a challenge to a RCRA permit based on environmental justice issues; (3) environmental justice concerns in corrective action cleanups; and (4) how EPA programs can take account of ''cumulative risk'' and ''cumulative effects'' associated with the siting of a hazardous waste management facility. The Agency noted that, while it did not expect to address these issues in this rulemaking, public input on these topics would be helpful.

Synopsis of Major Comments on § 124.30 and Preamble. The major comments on this section of the proposal involved definitions. Commenters asked the Agency to define many of the terms in § 124.30, including ''all reasonable efforts,'' ''significant,'' ''non-English speaking'' and ''affected community.'' The commenters were concerned about the disputes, controversy, and litigation that could arise from these undefined terms. Other commenters supported the concept of equitable public participation, particularly as an approach to addressing any environmental justice concerns that might be present.

The Agency received a number of comments supporting expanded public participation as an effective approach to addressing environmental justice issues. Commenters stated that additional opportunities for public involvement and access to information will increase the probability that all communities will have input into the permitting process, and should strengthen involvement of those who have felt disenfranchised from the process. Some commenters urged EPA to avoid a one-size-fits-all approach and allow flexibility for State, local, and facility leadership to make suitable determinations about how to address environmental justice issues.

EPA's Response to Commenters. EPA is committed to the principles of equitable public participation and equal treatment of all people under our environmental statutes and regulations. The regulatory changes we are making today will enhance the RCRA public participation process for all citizens. We urge all permitting agencies, permit holders, and applicants, to make all reasonable efforts to provide equal access to information and participation in the RCRA permitting process.

While we continue to promote equitable public participation, we have decided to address the objectives of § 124.30 in guidance rather than through regulatory language. In response to the concerns expressed by many commenters, we are not including § 124.30 in the final rule. The Agency agrees with the commenters who expressed concern that the language in the proposal was ambiguous, making compliance with the requirements difficult to evaluate and enforce, and could engender disputes and litigation without advancing the objectives of today's rulemaking.

As we noted earlier, EPA continues to support the principles embodied in § 124.30 of the proposed rule. We encourage permitting agencies and facilities to follow the spirit of that section and use all reasonable means to ensure that all segments of the population have an equal opportunity to participate in the permitting process and have equal access to information in the process. These means may include, but are not limited to, multilingual notices and fact sheets, as well as translators, in areas where the affected community contains significant numbers of people who do not speak English as a first language.

In lieu of a regulation, the Agency will take additional steps to encourage equitable public participation in RCRA permitting. In the near future, EPA will issue further guidance to assist facilities, permitting agencies, and communities in implementing the expanded public participation requirements in today's rule. In this guidance document, EPA plans to discuss additional options for increasing public participation by going beyond the regulatory requirements. The guidance document will address, in more detail, the approaches to equitable public participation that we are emphasizing in this preamble.

EPA believes that this rule presents significant opportunities to be responsive to environmental justice concerns in the context of public involvement. Prior to the promulgation of today's rule, the permitting process did not formally involve the public until the permitting agency issued a draft permit or an intent to deny a permit. In many cases, communities around RCRA facilities felt that the draft permit stage was too late to enter the process, that the facility and the permitting agency had already made all the major decisions by that point, and any comments the public offered would have no real effect. Insufficient opportunity for communities to become involved in environmental decision-making is a contributing factor to environmental justice concerns. The provisions in today's rule will address many of these concerns by expanding public participation and access to permitting information.

EPA continues to see public participation as an important activity that empowers communities to become actively involved in local waste management activities. The Agency believes that this rulemaking is an important step in empowering all communities, including communities of color and low-income communities.

EPA agrees with the commenters who stated that the expanded public participation requirements in today's rule will be useful tools for addressing environmental justice concerns. Today's rule provides all communities with a greater voice in decision making and a stronger opportunity to influence permit decisions early in the process. EPA also agrees with the commenters who stated that environmental justice issues should be addressed at a local level and on a site-specific basis. Local agencies and leaders have an important role to play in addressing environmental justice concerns. States and EPA Regional offices are the principal implementors of the RCRA permitting program, and have been directed to develop mechanisms that respond effectively to environmental justice concerns during permitting activities (RCRA Implementation Plan (RIP), 1995). In the RIP, EPA asked RCRA implementing agencies to continue their commitment to seek opportunities to address patterns of disproportionately high and adverse environmental effects and human health impacts on low-income communities and communities of color that may result from hazardous waste management activities. The States and Regions have been involved in

environmental justice pilot projects, which have included, among other activities, increasing public involvement by tailoring outreach activities to affected communities.

EPA and its Office of Solid Waste and Emergency Response (OSWER) also remain committed to addressing environmental justice concerns beyond those related to public participation. The preamble to the proposed rule (see 59 FR 28686) discussed OSWER's environmental justice efforts. Elliott P. Laws, OSWER Assistant Administrator, formed the OSWER Environmental Justice Task Force (''EJ Task Force'') to begin addressing many of these issues. EPA released the ''OSWER Environmental Justice Task Force Draft Final Report'' (OSWER 9200.3–16 Draft) and its separate executive summary (OSWER 9200.3–16–1 Draft) on April 25, 1994. Since that time, the EPA Regional offices and the OSWER program offices have been implementing the recommendations outlined in the EJ Task Force's draft final report. The report was distributed to the National Environmental Justice Advisory Council (NEJAC) for comment. In June 1995, after careful consideration of all comments, EPA released the ''OSWER Environmental Justice Action Agenda.'' The Action Agenda provides a concise summary of OSWER's current strategy and describes the implementation process for ensuring that major issues, identified by the NEJAC and others, continue to be recognized and addressed. A full report on implementation progress and accomplishments, entitled ''Waste Programs Environmental Justice Accomplishments Report,'' was released concurrently with the Action Agenda. All of these documents are ''living documents'' and, as such, are a part of the process of continuously addressing environmental justice concerns. This process represents OSWER's commitment to adhere to the principles of Executive Order 12898, in which the President directed federal agencies to identify and address the environmental concerns and issues of minority and low-income communities. Furthermore, in an effort to make environmental justice an integral part of the way we do business, the Agency issued a policy directive, in September 1994 (OSWER 9200.3–17), that requires all future OSWER policy and guidance documents to consider environmental justice issues.

During the public comment period on the proposed rule, EPA received a large number of comments on preliminary recommendations that the EJ Task Force had developed regarding several other (i.e., beyond today's public involvement rule) key environmental justice issues facing the RCRA permitting program. The comments ranged from general observations to more detailed suggestions, particularly with regard to siting criteria, cumulative risk assessments, and the need to base decisions on sound science.

We are disseminating the comments that deal with these environmental justice issues in the following manner: (1) We are forwarding the comments on RCRA facility siting to the Office of Solid Waste's (OSW) RCRA Siting Workgroup and to the NEJAC's Waste and Facility Siting Subcommittee's Siting Workgroup; (2) we are forwarding the comments on issues affecting RCRA corrective action to the RCRA Subpart S Workgroup, which is developing a rule to establish corrective action requirements for releases of hazardous wastes or hazardous waste constituents to any environmental medium, including ground water, from any solid waste management unit, including regulated units; (3) we are sharing the comments on cumulative risk, multiple exposure, and synergistic effects with the EPA Science Policy Council, the group actively working to address these issues; and (4) the comments on how EPA should respond to RCRA permit challenges based on environmental justice issues are being addressed by OSWER with assistance from the Office of General Counsel, Office of Civil Rights, and any other appropriate party.

EPA also received several comments that did not approve of the Agency's decision to discuss and solicit comments on the more technical environmental justice issues in the context of a RCRA public involvement rule. Many commenters argued that these issues are broad, far-reaching, and impact a much larger constituency than the intended audience for the public participation rulemaking.

EPA acknowledges the breadth of these issues. The preamble to the proposed rule has not been the only forum for discussing these issues. As we discussed above, EPA has received and considered comments from additional stakeholders, including States, the NEJAC, environmental groups, environmental justice groups, and regulated industries in developing the ''OSWER Environmental Justice Action Agenda.'' Furthermore, since the Action Agenda is a living document, OSWER will continue to seek external comments, suggestions and experiences as we strive to ensure environmental justice in all our programs.

B. Pre-Application Meeting and Notice

1. Applicability (Proposed § 124.31(d)). EPA proposed to exempt permit modifications, permit renewals, and permit applications submitted for the sole purpose of conducting post-closure activities from the requirements in § 124.31.

Synopsis of Major Comments on § 124.31(d). A number of commenters stated that the rule should require facilities seeking permit renewals to hold a pre-application meeting. Other commenters recommended that the pre-application meeting requirements apply to facilities making significant changes during the renewal process, or that the permitting agency should have discretion in applying the requirement to renewals. Opposing these commenters, several commenters supported the requirement as proposed and urged EPA to keep the exemption for renewals since many renewal applications simply continue ''business as usual.'' In these cases, said the commenters, the community will have adequate opportunity to participate in the renewal process; for instance, at the draft permit stage.

EPA's Response to Commenters. EPA has decided to expand § 124.31 to cover facilities that make a significant change at permit renewal. For the purposes of § 124.31, a ''significant'' change in facility operations is a change that is equivalent to a class 3 modification in § 270.42, e.g., operating conditions change significantly.

The Agency believes that this approach is a common sense compromise that will ensure adequate public participation in the necessary cases. At the same time, the regulated community will have the assurance that facilities undergoing minor changes will be spared unnecessary administrative burden.

EPA will continue the exemption for facilities that submit permits for the purpose of conducting post-closure activities. As we stated in the proposed rule, the goals of the pre-application meeting (e.g., establishing an early dialogue between the facility and the public) do not apply at most post-closure facilities. EPA's experience is that the public has usually been concerned with permit decisions relating to active hazardous waste management operations, as opposed to decisions relating to closed facilities. In addition, most post-closure activities are mandatory (e.g., maintenance of a closed unit) and involve fewer discretionary judgments than are involved in issuing an operating permit. The existing public participation

requirements in Part 124 (e.g., the notice and comment period at the draft permit stage) will continue to apply. Since closure and post-closure plans are included in the permit application, and become part of the permit, they will be available for public review and comment along with the application and the draft permit. Any changes to these plans after permit issuance will follow the modification procedures in § 270.42, which also have public notice requirements. We think that the existing process provides sufficient public involvement in post-closure permitting.

While we are retaining the exemption for post-closure permit applications in the final rule, we have tried to clarify our intent in the applicability requirements. Specifically, we have clarified that the exemption applies to facilities seeking permits solely to conduct post-closure activities, as well as to facilities seeking permits to conduct post-closure activities along with corrective action. Our intent in the proposal, which remains our intent in the final rule, was to distinguish post-closure facilities from facilities with operating units. However, someone could have read the proposed rule as not providing an exemption for post-closure facilities with remaining corrective action obligations (which post-closure facilities often have). Because the rationale for exempting post-closure activities applies whether or not the facility is also performing corrective action, EPA has added language to §§ 124.31(a) and 124.33(a) to clarify our intent.

2. Meeting Requirements (Proposed § 124.31(a)–(b)). In these two paragraphs, EPA proposed to require the permit applicant to hold at least one meeting with the public before submitting the part B permit application. The proposed rule listed topics that the applicant must cover and required the applicant to submit a record of the meeting and a list of attendees.

Synopsis of the Major Comments on § 124.31(a)–(b). The commenters generally expressed support for the pre-application meeting. Few commenters opposed EPA's proposal to have a meeting early in the process, though many suggested changes to the proposed rule itself.

Several commenters thought that the pre-application stage is too early for a public meeting. Some commenters stated that neither the applicant nor the agency could provide the public with accurate and complete information about the facility at such an early stage. Moreover, they noted, the application could change dramatically between the pre-application meeting and application submittal.

Some commenters asked EPA to clarify the record-keeping requirements in the final rule. A number of commenters opposed the requirement, with some commenters opposing the term ''record'' because it would qualify the meeting summary as an official document and make it subject to litigation. Other commenters opposed the rule's requirement that the applicant submit the record as a component of the part B permit application.

Concerning whether the permitting agency should conduct, or even attend, the meeting, the comments varied. Some commenters supported agency attendance because the agency would provide the meeting with credibility and a source of accurate information. Other commenters expressed concern that agency attendance would interfere with the ''open and informal dialogue'' between the facility owner and the public.

Finally, many commenters supported alternatives to the pre-application meeting. Numerous commenters backed the idea of combining pre-application meetings with the siting meetings that many States already require. A few commenters noted that EPA should allow such a combination only where the State meeting fulfills all the requirements of the pre-application meeting. Another group of commenters supported other options, such as using an Intent-to-Submit form in place of the meeting or holding the meeting after application submittal.

EPA's Response to Commenters. Section 124.31(b) of the final rule requires the facility to hold a meeting prior to submitting the part B permit application; however, the rule language no longer lists specific topics that the facility must cover in the meeting, requiring instead that the facility solicit questions from the community and inform the community about proposed hazardous waste management activities. After the meeting, the facility must prepare a ''summary'' of the meeting and submit it as a component of the part B permit application. The agency should use its judgement in deciding whether to attend the meeting.

EPA disagrees with the commenters who stated that the pre-application stage is too early to hold a meeting with the public. The most important goal we hope to achieve from the pre-application meeting requirement is the opening of a dialogue between the permit applicant and the community. We believe that the applicant should open this dialogue at the beginning of the process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications (see the discussion two paragraphs below). We hope that this requirement will help address the public concern that public involvement occurs too late in the RCRA permitting process. Although the Agency agrees with the commenters that the early timing of the meeting may prevent the agency and the applicant from having complete information, we believe that the benefits of early public involvement and early access to information outweigh the drawbacks of incomplete information.

In any case, EPA does not intend for the pre-application meeting to be a forum for examining technical aspects of the permit application in extensive detail; such technical examination is more suited to the draft permit stage. Instead, the pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of a hazardous waste management facility's operations. We anticipate that the applicant and the public will share ideas, educate each other, and start building the framework for a solid working relationship. Of course, the public retains the opportunity to submit comments throughout the process.

EPA has also revised the pre-application meeting requirements in the final rule to make them more straightforward and more flexible than the requirements in the proposed rule. The Agency is trying to provide flexibility in the way that permit applicants hold pre-application meetings. To this end, we have removed the list of required discussion topics, proposed in § 124.31(a). In addition, we have removed from the rule provisions that the commenters considered vague, including the requirement that the applicant describe the facility ''in sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility and the implications for human health and the environment.'' We agree with commenters that such a requirement would be difficult to implement and enforce.

While we have removed such requirements from the final rule, we expect permit applicants to follow the spirit of the proposed requirements. For instance, we encourage permit applicants to address, at the level of detail that is practical at the time of the meeting, the topics we identified in § 124.31(a) of the proposed rule: the

type of facility, the location, the general processes involved, the types of wastes generated and managed, and implementation of waste minimization and pollution control measures. The discussions may also include such topics as the transportation routes to be used by waste transporters and planned procedures and equipment for preventing or responding to accidents or releases. These are examples of the types of issues that might be of particular concern to a community and about which the community might be able to provide useful suggestions to the applicant. The applicant might then be able to incorporate that information into the proposed facility design or operations, either as part of the initial application, if time allows, or at subsequent stages in the process (e.g., in submitting revisions to its application, or in responding to a Notice of Deficiency issued by the permitting agency). By learning about and addressing public concerns up front, the applicant may be able to prevent misunderstanding from escalating into community opposition.

Moreover, the applicant should make a good faith effort to provide the public with sufficient information about the proposed facility operations. While we do not expect applicants to go into extensive detail at the pre-application stage, they should provide the public with enough information to understand the facility operations and the potential impacts on human health and the environment. In addition, as we emphasized in the preamble to the proposed rule (59 FR 28691), the permit applicant should encourage full and equitable public participation by selecting a meeting date, time, and place that are convenient to the public.

The final rule requires the applicant to submit a ''summary'' of the pre-application meeting as a component of the part B permit application. EPA shares the concern of several commenters that ''the record'' could be subject to litigation, for instance, on the basis of inaccuracy. EPA's intent in this rule is to foster communication and mutual understanding, not to create divisiveness and additional points of dispute in the permitting process. Thus, we have deleted the word ''record'' and replaced it with ''summary'' in the final rule. We do not intend for the meeting summary to be a verbatim account of the meeting; the Agency is aware of how difficult it is to keep a word-for-word record of a public meeting. Applicants should make a good faith effort to provide an accurate summary of the meeting and a list of all attendees who wish to identify themselves (see § 124.31(b) of the final rule).

In accordance with our intent in the proposed rule, we are requiring the permit applicant, in the final rule, to submit the summary as a component of the part B permit application. Since the part B application is available for review by the public, requiring the meeting summary to be part of the application assures that people who are unable to attend the meeting will have an opportunity to learn what transpired at the meeting. In the proposed rule, however, the Agency neglected to add the summary to the list of part B requirements in § 270.14(b). We have added this reference in the final rule.

The pre-application meeting summary will be useful to the permitting agency. The summary will alert the agency to important community concerns, areas of potential conflict, and other issues that may be relevant to agency permitting decisions. In addition, the meeting attendee list will help generate a mailing list of interested citizens. (The permitting agency is responsible for developing a representative mailing list for public notices under § 124.10). The list of attendees from the pre-application meeting will assist the permitting agency in identifying people or organizations to include on the mailing list so that it represents everyone who demonstrates an interest in the facility and the permit process. It has been EPA's experience that mailing lists often are not fully developed until the permitting agency issues the draft permit for public comment. Since EPA seeks to increase public participation earlier in the process, generation of a mailing list should precede such activities. A mailing list developed pursuant to § 124.10 could also be available to enhance public participation in other Agency or community-based initiatives.

The actual timing of the meeting is flexible in the final rule. The Agency believes that flexibility is necessary because the optimal timing for the meeting will vary depending on a number of factors, including the nature of the facility and the public's familiarity with the proposed project and its owner/operator.

In today's rule, we require the facility to conduct the pre-application meeting. We believe that the applicant should conduct the meeting in an effort to establish a dialogue with the community. We encourage permitting agencies to attend pre-application meetings, in appropriate circumstances, but the agency should not run the pre-application meeting. Although agency attendance may, at times, be useful in gaining a better understanding of public perceptions and issues for a particular facility, it may undercut some of the main purposes of the meeting, such as opening a dialogue between the facility and the community, and clarifying for the public the role of the applicant in the permitting process.

In the proposed rule, EPA solicited comments (see 59 FR 28702) on the option of allowing a State siting meeting to substitute for the pre-application meeting. EPA is not including this option in the final rule, because doing so would defeat some of the purposes of the pre-application meeting (e.g., establishing an open dialogue on a range of RCRA permitting issues that may differ from siting issues). Some commenters suggested that siting meetings and pre-application meetings be combined. There is nothing in today's rule to preclude States and permit applicants from working together to combine these meetings. EPA encourages them to do so, provided that the combined meetings fulfill the pre-application meeting requirements in today's rule.

3. Notice of the Pre-Application Meeting (§ 124.31(c)). Paragraph (c) of proposed § 124.31 required the facility to give notice of the pre-application meeting at least 30 days prior to the meeting ''in a manner that is likely to reach all affected members of the community.'' EPA proposed to require the facility to give the notice in three ways: as a display advertisement in a newspaper of general circulation; as a clearly-marked sign on the facility property; and as a radio broadcast. Each of these notices had to include the date, time and location of the meeting, a brief description of the purpose, a brief description of the facility, and a statement asking people who need special access to notify the applicant in advance.

Synopsis of the Major Comments on § 124.31(c). Most commenters expressed general support for the expanded notice requirements, but questioned specific aspects of the proposal. The commenters also asked for flexibility in choosing the types of notice that would best reach different communities.

The newspaper advertisement requirement brought up the most controversy. Some commenters challenged as vague the provision that the facility publish the notice in the local paper and also in papers of adjacent counties.

A number of commenters pointed out problems with requiring a large sign at the facility. Some commenters mentioned that nobody would pass near enough to some rural facilities to see the

sign. Other commenters reminded EPA that some communities have ordinances that ban large signs. The commenters urged that the rule be more flexible and allow applicants to place signs at nearby intersections or on town bulletin boards. Other commenters recommended that the agency approve the sign or grant waivers where communities ban signs.

The commenters did not express many objections to the radio requirement, but asked for overall flexibility in the notice requirements.

EPA's Response to Commenters. In response to these comments, EPA has enhanced the flexibility of the final rule. Instead of requiring the applicant to provide three specific types of public notice, as in the proposed rule, the final rule specifies only one type of notice (i.e., the display advertisement). The other notices must fall within broader categories—one must be a broadcast announcement and one must be a sign—but are otherwise flexible.

We have decided to retain the display ad requirement because of the expanded public notice it will provide; at the same time, we have increased the flexibility of the requirement by moving some of the proposed rule's more general provisions out of rule language and into guidance, both in today's preamble (see below) and in the future guidance document for implementing this rule.

Section 124.31(d) requires the applicant to keep documentation of the public notice and provide the documentation to the permitting agency upon request. The reason for this requirement is to provide proof of the public notice that can be verified by the permitting agency. We do not want this requirement to be burdensome for the facility. Instead, we encourage the facility to keep a simple file for the notice requirements. Items for inclusion in the file may include: copies of the newspaper announcement, a receipt or affidavit of the radio announcement, a photograph of the sign, or a receipt of purchase for the sign.

The Agency expects that applicants and permit holders will make a good faith effort to announce the pre-application meeting to as many members of the affected community as possible.

- The newspaper advertisement. The applicant must print a display advertisement in a newspaper of general circulation in the community. The display ad should be located at a spot in the paper calculated to give effective notice to the general public. The ad should be large enough to be seen easily by the reader. In addition to the display ad, we also encourage facilities to place advertisements in free newspapers and community bulletins.

In some cases, potential interest in the facility may extend beyond the host community. Under these circumstances, we encourage the applicant either to publish the display ad so that it reaches neighboring communities or to place additional ads in the newspapers of those communities.

- The visible and accessible sign. The final rule requires the applicant to post the notice on a clearly-marked sign at or near the facility. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass, on foot or by vehicle, by the site. The Agency anticipates that the signs will be similar in size to zoning notice signs required by local zoning boards. If a sign on the facility grounds is not practical or useful—for instance, if the facility is in a remote area—then the applicant should choose a suitable alternative, such as placing the sign at a nearby point of significant vehicular or pedestrian traffic. In the case that local zoning restrictions prohibit the use of such a sign in the immediate vicinity of the facility, the facility should pursue other available options, such as placing notices on a community bulletin board or a sign at the town hall or community center. EPA intends the requirement that the sign be posted ''at or near'' the facility to be interpreted flexibly, in view of local circumstances and our intent to inform the public about the meeting. In addition to the requirements of § 124.31, we encourage the applicant to place additional signs in nearby commercial, residential, or downtown areas.

- The broadcast media announcement. The final rule requires the applicant to broadcast the notice at least once on at least one local radio or television station. EPA expects that the applicant will broadcast the notice at a time and on a station that will effectively disseminate the notice. The applicant may employ another medium with prior approval of the Director. We encourage the applicant to consult the preamble to the proposed rule (59 FR 28690) for recommendations on choosing the best circumstances for the broadcast announcement.

EPA will soon issue a guidance document to assist facilities and agencies in implementing the expanded public participation requirements. The guidance document will include more detailed discussions on the approaches to broad and equitable public notice that we are emphasizing in today's preamble.

C. *Notice at Application Submittal (§ 124.32)*

1. Applicability (Proposed § 124.32(c)). The proposed rule required the permitting agency to send a notice to the facility mailing list upon receipt of a permit application. EPA proposed that the rule apply to all new and interim status facilities, but not to permit modifications or applications submitted for the sole purpose of conducting post-closure activities.

Synopsis of Major Comments on Proposed § 124.32(c). The commenters generally supported this provision of the proposed rule. A few commenters recommended that EPA apply the provision to modifications, post-closure permits, and interim status facilities.

EPA's Response to Commenters. The final rule retains the applicability standards of the proposed rule. We continue to believe that the notice at application submittal is an effective means to let the community know that the permitting agency has received a permit application. The notice allows members of the community to keep track of new or existing facilities and to review, concurrently with the permitting agency, the permit application, which will be available for review at a location specified by the permitting agency (either in the vicinity of the facility or at the permitting agency's office). We suggest that the permitting agency consult the public when choosing a suitable location to place the application materials for public review.

The notice requirement does not apply to permit modifications or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility. The permit modification requirements in § 270.42 already include provisions for providing public notice of modification requests. We explain the exemption for post-closure activities in section B.1. above.

2. Responsibility and Timing (Proposed § 124.32(a) and (b)). The proposed rule directed the permitting agency to give the notice ''within a reasonable period of time after the application is received by the Director.'' The proposed rule also listed the information that must go in the notice.

Synopsis of Major Comments on Proposed § 124.32(a) and (b). Many of the commenters provided suggestions on who should be responsible for the notice at application submittal. The majority of these commenters supported EPA's proposal, agreeing that the Director should issue the notice. A few commenters expressed concern over the

timing of the notice. They suggested that EPA rewrite the rule to require the Director to issue the notice within 30 days of application submittal.

EPA's Response to Commenters. These provisions have not changed from the proposed rule to the final rule. EPA maintains its position that the permitting agency should be responsible for providing the public notice at application submittal. Providing the notice will demonstrate clearly that the permitting agency's role in the process has begun.

We anticipate that the permitting agencies will issue timely notices and, thus, we have decided not to prescribe a time frame for agency issuance of the notice at permit application.

D. Information Repository

1. Applicability/Use/Responsibility (Proposed §§ 124.33(a) and 270.30(m)). EPA proposed to give the Director the authority to require the facility to establish and maintain an information repository during the permitting process (§ 124.33(a)) or during the life of a permit (§ 270.30(m)). The purpose of the repository, as proposed, was to make information available to the public during the permit issuance process and during the life of a permit.

Synopsis of Comments on Proposed §§ 124.33(a) and 270.30(m). A number of the comments asked EPA for exemptions from the repository ''requirement,'' especially for boilers and industrial furnaces (BIFs) and federal facilities that must fulfill similar standards under other rules. Many commenters asked for flexibility, suggesting that EPA allow the Director to decide when to require a repository. Some commenters suggested that the Director use this authority only in cases where the community shows true need or public interest when the facility is high. Making a contrary point, a group of commenters argued that the repository should be mandatory for all facilities. Another group of commenters insisted that the permitting agency should be responsible for the repository, or at least split the responsibility with the facility.

EPA's Response to Commenters. In the final rule, EPA has rewritten §§ 124.33(a) and 270.30(m) to better reflect our original intent in proposing the information repository requirement. Our intent was for permitting agencies to use the information repository requirement sparingly. We anticipate that the Director will require such a repository only in special cases where a significant amount of public concern has surfaced or where the community has unique information needs.

Many commenters suggested exemptions from the ''information repository requirement.'' However, the information repository is not a requirement that applies to a pre-determined group of facilities. Instead, the information repository is a public involvement tool that today's rule makes available to permitting agencies for use on a case-by-case basis. Accordingly, there is no need for exemptions from §§ 124.33 or 270.30(m).

Some of the confusion over this section may be the result of the language in the proposed rule. We have reworded §§ 124.33 and 270.30(m) in the final rule to make clear that the Director shall assess a variety of factors, including the status of existing repositories and the community's proximity to a copy of the administrative record, when considering whether or not to require a repository at any facility. So, for instance, if the Director determines that public interest warrants a repository at hypothetical Facility X, but finds that a BIF repository already existing at the facility is responsive to the public interest, then the Director may determine that the facility has no need for a repository under §§ 124.33 or 270.30(m). Or, if the existing repository does not completely satisfy the need that the Director identified, then the Director may specify additional steps that the facility must take to make the repository meet the public need. At Facility X, for instance, the Director may require the facility to make available more information on the general permitting standards, or on the permit application and technical standards for the other units on site, aside from the BIF unit. The facility could then add this information to the existing repository if the repository meets the requirements of §§ 124.33 or 270.30(m).

2. Contents (Proposed § 124.33(b) and (e)). The proposed rule language required the repository to contain all ''documents, reports, data, and other information deemed sufficient by the Director for public understanding,'' as well as information on public involvement activities and how to get on the facility mailing list.

Synopsis of the Major Comments on Proposed § 124.33(b) and (e). A number of commenters recommended specific documents and types of documents (e.g., the permit application, all relevant fact sheets) that EPA should require in the information repository provisions. Some commenters insisted that the content requirements in the proposed rule were too vague. Other commenters thought that EPA should ban certain materials (e.g., public relations literature) from the information repository.

EPA's Response to Commenters. We have changed the repository content requirements in the final rule. The new provision requires the repository to hold ''all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established.'' We have tried to be as flexible as possible in this section since the permitting agency could require a facility to establish a repository at any stage during any permit process or for any time during the life of the facility. Moreover, the requirement to establish a repository will be imposed by the Director on a case-by-case basis; after taking into account the site-specific factors in each case, the Director will decide what materials are appropriate for the repository.

The final rule gives the Director the authority to limit the contents of the repository. While the rule creates no outright bans on materials, EPA anticipates that the Director will use his or her discretion to ensure that repository materials are relevant to permitting activities and to prevent parties from placing inappropriate materials in the repository. We encourage permitting agencies, in the spirit of equitable public participation and access to information, to consult the public regarding what materials would be most useful to members of the surrounding community.

3. Location (Proposed § 124.33(c)). The proposed rule stated that the facility should choose the location for the repository in a place with suitable public access. If the Director opposed the site, then the Director could choose a more appropriate location. The proposed rule also required the repository to be open during reasonable hours and to give the public access to photocopy service (or an alternative means for people to obtain copies).

Synopsis of Public Comments on § 124.33(c). Several commenters expressed concern over the geographic location of the repository. Other commenters asked that EPA rewrite the rule to allow for on-site repositories.

EPA's Response to Commenters. EPA has tried to be flexible in revising the final rule. While we expect that the Director will only infrequently require a repository, we anticipate that those situations will all be different. For this reason, we have avoided writing narrow prescriptions for the location of the repository. Instead, § 124.33(d) of the final rule retains the provision allowing the facility to choose the location. We encourage facilities, in the spirit of

equitable public participation and access to information, to involve the public when suggesting a location for the repository. The Director has the discretion to choose a more suitable location if he or she finds that the one chosen by the facility is unsuitable based on access, location, hours of availability, or other relevant criteria. The Director should exercise this authority sparingly; we are anticipating that, in the great majority of cases, the facility will choose a suitable location. EPA encourages facilities to establish repositories off-site (i.e., within the community where the facility is located) whenever an off-site repository is feasible and would be more readily accessible to the public. Today's rule does not, however, preclude the use of on-site repositories.

4. Timing and Duration (Proposed § 124.33(f)). The proposed rule required the facility to maintain and update the repository for a time period determined by the Director. The proposal also stated that the Director could require the repository at any time during the application process for a RCRA permit or during the active life of a facility.

Synopsis of the Major Comments on Proposed § 124.33(f). The commenters submitted a variety of comments concerning the timing and duration of the repository. Some commenters thought that permitting agencies need flexibility in applying the repository requirement. Others thought that EPA should require the repository to open and close at specific points during the permitting process. One group of commenters insisted that EPA include a provision in the rule to allow for automatic closure of the repository once the permit is issued, denied, or appealed.

EPA's Response to Commenters. In the final rule, EPA clarifies its intent that the Director have the discretion to apply the repository requirement at any time during the permitting process or the life of a facility. Given that it is within the Director's discretion whether to establish a repository at all, we believe that it would be inappropriate to prescribe specific timing and duration requirements that are triggered by the creation of a repository; rather, the Director should decide on questions of timing and duration on a case-by-case basis. The final rule continues the proposed rule's provision that the Director determine the duration of the repository. The final rule provides that the Director can close the repository, based on the same standards (found in paragraph (a)) that the Director uses when assessing the need for a repository.

E. Trial Burn Notices

1. Notice of the Trial Burn for Permitted Combustion Facilities (Proposed §§ 270.62(b)(6) and 270.66(d)(3)). Permits for new hazardous waste combustion facilities must include a plan, approved by the permitting agency as part of the permit, that describes how the facility will conduct the trial burn. However, because construction of a new facility may take a considerable period of time, the trial burn itself might not take place until several years after permit issuance. The proposed rule required the permitting agency to give public notice of the impending trial burn for permitted incinerators and BIFs. Under the proposed rule, the permitting agency would send a notice to the facility mailing list and appropriate units of State and local governments announcing the scheduled commencement and completion dates for the trial burn. The notice would also provide the public with contact information at the permitting agency and the facility and a location where members of the public could review the approved trial burn plan. The proposal required the permitting agency to mail the notice within a reasonable time period prior to the trial burn.

Synopsis of the Major Comments on Proposed §§ 270.62(b)(6) and 270.66(d)(3). We received both positive and negative comments on the proposed notice of trial burn for permitted combustion facilities. The supporters noted the importance of informing the public of the anticipated time period for conducting the burn, because a significant amount of time may elapse between issuing the permit and conducting the trial burn.

Those who opposed the trial burn notice asked what benefit would accrue from public notice of an impending, scheduled trial burn for a new (permitted) facility. One commenter asked EPA to discuss the purpose for requiring this notice from a new facility, considering that the schedule is set out in the permit and the trial burn plan is already open for public comment as part of the draft permit. Some commenters thought that the other permitting events already provide sufficient opportunity for public comment. Other commenters opposed the requirement that the permitting agency give the trial burn notice, claiming that delays would ensue when the agency could not publish the notice on time.

EPA's Response to Commenters. EPA has decided to finalize the trial burn notice provisions for permitted facilities as proposed. The Agency agrees with the commenters who noted the importance of keeping the community up to date on permitting activities at the facility. Several years may pass between the approval of the trial burn plan and the actual date of the trial burn. During the intervening time, the public may not necessarily remain up to date on activities at the facility. The trial burn is a significant step in the process of a combustor moving toward full operation; experience has shown that the public is often interested in knowing when the burn will occur so that citizens can review the trial burn results. Thus, we remain committed to giving notice of the impending trial burn at permitted facilities.

The final rule requires the permitting agency to send the notice to the facility mailing list. While we do not specify a time period during which the permitting agency should send out the notice, we anticipate that permitting agencies will typically notify the public at least 30 days before the trial burn.

The final rule does not provide for a comment period after the permitting agency gives notice of the trial burn dates. A number of commenters asked EPA what the purpose of such a notice would be, if not to open a comment period. Other commenters asked the Agency to make clear whether or not the rule would require a comment period during the trial burn stage. EPA decided that a comment period during the trial burn phase would not be necessary or appropriate. The public has already had the opportunity to be involved with, and comment on, the trial burn plan during the draft permit stage. Our intent in providing for the notice at this stage is to make the public aware of an impending trial burn. The notice will serve as an update, rather than the opening of a comment period.

Finally, EPA has clarified in §§ 270.62(b)(6) and 270.66(d)(3) that a new hazardous waste combustion facility applying for a permit may not commence its trial burn until after the permitting agency has issued the required notice. It was clear from the proposal that we intended for the permitting agency to issue the notice before the trial burn. However, the proposed rule language did not explicitly state the obvious corollary, which was that the facility may not commence the trial burn until after the notice.

EPA does not believe that the notice requirement established by today's rule will delay trial burns. The notice requirement is straightforward and easy to implement; we do not anticipate that permitting agencies will fail to issue the required notices in a timely fashion.

Because the notice is purely informational, EPA will be flexible in interpreting the requirement that the notice be mailed a reasonable time before the commencement of the trial burn. Ideally, the Agency anticipates that permitting agencies will mail the notice at least thirty days before the trial burn. However, as long as the notice is mailed sufficiently in advance of the scheduled trial burn so that the recipients would be expected to receive the notice prior to the commencement date, EPA would consider the notice timely.

It is EPA's intent that the trial burn notice requirements in §§ 270.62(b)(6) and 270.66(d)(3) apply only to initial trial burns, and not to subsequent trial burns that may be conducted as part of the permit modification procedures. EPA believes that the trial burn notices required by today's rule are not necessary in these latter circumstances, since the amount of time between modification approval and the subsequent trial burn is typically much shorter than the amount of time that may elapse between permit issuance and the initial trial burn. Moreover, the modification procedures in § 270.42 include provisions for involving the public throughout the modification submittal and approval process (e.g., through notices or public meetings). Of course, if there are substantial unforeseen delays between the approval of the modification request and the trial burn, EPA suggests that the permitting agency issue a notice in accordance with the procedures set forth in today's rule.

2. Notice of Planned Trial Burn Plan Approval for Interim Status Combustion Facilities (Proposed § 270.74(b) and (c)(3)). Trial burns at interim status facilities generally take place before permit issuance so that the permitting agency can set operating conditions in the permit based on the results of the trial burn. The proposed rule required the permitting agency to give public notice of the tentative approval of a trial burn plan for interim status incinerators and BIFs. The notice requirements are the same as those proposed for permitted incinerators and BIFs, except for an additional provision that the notice contain a schedule of activities that are required prior to permit issuance, including the permitting agency's anticipated schedule for trial burn plan approval and the actual trial burn.

Synopsis of Major Comments on § 270.74(b) and (c)(3). Many of the comments described in section E.1. above with regard to the trial burn notice for permitted incinerators and BIFs also are relevant to the trial burn notice for interim status incinerators and BIFs (e.g., comments on the timing of the notice). A number of commenters raised the issue of a comment period on the trial burn plan for interim status facilities. A few commenters supported the idea, some opposed it, and several more asked EPA to clarify whether or not we would require a comment period on the tentatively approved trial burn plan. One commenter noted that this additional information was critical for interim status facilities where the public has not yet had an opportunity for involvement.

EPA's Response to Commenters. EPA has decided to finalize the provisions for interim status facilities with two slight changes from the proposal. First, the final rule provides for notice of the Director's intention to approve a trial burn plan, rather than his or her ''tentative approval.'' In response to commenter concerns that the notice could be an extra time-consuming step in the process, EPA has changed the language to better reflect its intent that the notice occurs in the final stages of review, rather than being a separate step following completion of review.

Second, we proposed to place the notice requirements in a newly created § 270.74, which contained interim status combustion permitting requirements. However, since EPA is not finalizing the combustion permitting sections of the proposed rule at this time, we have integrated the notice requirements with the regulations for the permitting of interim status combustion facilities, i.e., § 270.62(d) for incinerators and § 270.66(g) for BIFs.

Although the Agency has not changed the trial burn plan notice requirements for interim status combustors in the final rule, the requirements are in a different format than in the proposal. First, the notice requirements are now located in the centers of the paragraphs (§ 270.62(d) for incinerators and § 270.66(g) for BIFs) along with other permitting requirements. Since the notice contents for interim status facilities differ from the contents for permitted facilities with regard to announcing planned approval of the trial burn plan, we are amending §§ 270.62(d) and 270.66(g) to list the specific information that the permitting agency must include in the notices for interim status combustors. Second, we do not list the timing and distribution requirements for the notice for interim status facilities, as we did in the proposed rule. Instead, each of these paragraphs refers the reader to another paragraph (§ 270.62(b) and § 270.66(d), respectively) that covers the notice of the trial burn for permitted facilities. For instance, § 270.62(d) states that the agency shall issue the notice ''in accordance with the timing and distribution requirements of (b)(6) of this section.'' The requirements in (b)(6) are the new notice requirements that we are issuing today for permitted combustion facilities (see section E.1. above). In following the standards in (b)(6), the permitting agency will send the notice to the facility mailing list and the appropriate units of State and local government within a reasonable period of time before the trial burn. Section 270.66(g) takes the same approach for BIFs by referring to paragraph (d) of that section.

For permitted combustion facilities, EPA has clarified in §§ 270.62(b)(6) and 270.66(d)(3) that a facility applying for a permit may not commence its trial burn until after the permitting agency has issued the required notice. EPA does not believe that comparable clarifying language is necessary in §§ 270.62(d) or 270.66(g) for the notice of planned approval of a trial burn plan for an interim status facility. EPA believes it is clear under these provisions that the permitting agency will not approve a plan and, consequently, the facility cannot commence its trial burn, until issuance of the required notice.

The role of the notice for interim status BIFs and incinerators is much the same as the notice for permitted facilities, i.e., to keep the public informed throughout the trial burn stage. The final rule does not require a comment period after the permitting agency gives notice of the planned approval of the trial burn plan and the trial burn dates for interim status facilities. The trial burn notice, like the other notices required by this rule, is primarily intended to keep the community informed while not slowing down the permitting process. Since interim status facilities are already operating, and continue to operate while the permitting agency evaluates the permit application, EPA does not believe it would generally be in the public interest to delay the evaluation process in order to provide a formal response to comments on the trial burn plan. However, if members of the public submit significant information or views relating to the trial burn plan, the Director should consider this information, and may choose to respond in writing at the time of plan approval. In addition, a formal comment period will, of course, still take place after draft permit issuance.

EPA believes that the final rule strikes the appropriate balance between public

involvement and the efficiency of the permitting process. The notice alerts the public of the impending trial burn, and of the opportunity to review the trial burn plan. Since EPA is not yet finalizing the other revisions to combustion permitting procedures proposed in § 270.74, trial burn plans for interim status combustors may not always be available for review with the rest of the application. Through today's notice requirement, the public will still have an opportunity to stay informed and to review the plan before the Director approves it.

EPA is currently considering and addressing the comments it received on the revised combustion permitting procedures. If those procedures are finalized and go into effect as proposed, including the provision requiring facilities to submit trial burn plans with permit applications, the public will have the opportunity to review and submit opinions or suggestions on the proposed trial burn plan at any time after the facility submits the application. At that time, EPA will have the opportunity to consider any such submissions in the process of reviewing the plan. Accordingly, EPA is not requiring a comment period for the planned trial burn plan approval in this rule, since such a requirement could likely be rendered unnecessary in the future.

V. State Authority

A. Applicability of Today's Rule in Authorized States

The overall effect of today's final rule is to increase the stringency of the RCRA permitting process. Therefore, States that are authorized to administer and enforce the RCRA program in lieu of EPA under section 3006 of RCRA are required to modify their programs by adopting equivalent requirements if necessary (see § 271.21(e)). States must submit their proposed program modifications to EPA for approval according to the schedules set forth in section V.B. below.

EPA is promulgating today's rule pursuant to statutory authority that existed prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984. As we explained in more detail in the proposed rule (59 FR 28703–04), EPA will implement §§ 124.31 (the pre-application meeting), 124.32 (the notice at application submittal), and 124.33 (the information repository) of this rule in authorized States only when EPA is processing permit applications for hazardous waste management units over which it has the basic permit issuance authority (e.g., BIFs in States not yet authorized to issue BIF permits). EPA has added language to §§ 124.31(a), 124.32(a), and 124.33(a) of the final rule to clarify that EPA will implement these sections only for such applications. For all other permit applications in authorized States, the requirements of these sections will not take effect until the States adopt and become authorized for this rule.[2]

Under this approach, EPA will be implementing §§ 124.31, 124.32, and 124.33 only where it is the basic permitting authority for the unit. EPA will, of course, implement these sections in non-authorized States. EPA will also implement these sections in authorized States when the permit application in question contains one or more hazardous waste management units for which the State is not authorized to issue RCRA permits and, thus, EPA has basic permit issuance authority. For example, EPA will implement today's rule when processing an application that includes a BIF if the State is not authorized to issue BIF permits. The facility with the BIF unit will be subject to all the applicable requirements in today's rule.

However, if the State is authorized to issue RCRA permits for all of the hazardous waste management units in an application, then EPA will not implement the requirements in §§ 124.31, 124.32, and 124.33. EPA will not implement those provisions in such a case, even though EPA may retain authority to issue a HSWA ''rider'' relating to the units in the application (e.g., authority to control air emissions from certain units under 40 CFR Part 264 Subparts AA, BB, and CC), or relating to the facility as a whole (e.g., corrective action authority under 40 CFR § 264.101). For example, EPA will not implement §§ 124.31, 124.32, and 124.33 when processing the corrective action portion of a tank storage permit application in an authorized State.

The Agency believes that this arrangement best implements the intent of today's rule. EPA designed the pre-application meeting, the notice at application submittal, and repository requirements to enhance communication and understanding between the public, the facility owners and operators, and the permitting agency. These requirements will foster a dialogue between facilities and communities with a focus on fundamental permitting issues. EPA believes that these interactions are properly part of the application process for the basic permit to conduct hazardous waste management operations, and not part of the process to evaluate and issue additional conditions through a HSWA rider. Accordingly, and consistent with the proposal, we have explicitly tied these requirements to the basic permit issuance authority for hazardous waste management units.

For most units in most States, the basic permit issuance authority rests with the State. Accordingly, EPA strongly urges authorized States to adopt this rule in an expeditious manner. Specifically, EPA encourages States that have not yet adopted the BIF rule to adopt the new public participation procedures concurrently with their BIF rules, rather than deferring adoption to the somewhat later deadline that applies to today's rule.

In adopting today's rule, authorized States should not include in their approved regulations the limiting language added to the final applicability sections of §§ 124.31, 124.32 and 124.33. This language includes both the limitation of the sections' applicability to ''all applications seeking RCRA permits for hazardous waste management units over which EPA has permit issuance authority'' and the definition of the phrase ''hazardous waste management units over which EPA has permit issuance authority.'' Obviously, the reference to EPA would be inappropriate in a State rule. Moreover, even if the State changed the language to refer to the State environmental agency, the provision would be unnecessary because authorized States process RCRA permit applications and administer RCRA permits only at facilities with units over which they have permit issuance authority. Accordingly, EPA recommends that States not include in their regulations limiting language similar to that in today's final rulemaking.

[2] EPA is not including similar limiting language, like the language in §§ 124.31, 124.32, and 124.33, in the other provisions of today's rule. With respect to § 270.14, the requirement to submit the summary of the pre-application meeting with the Part B permit application expressly references § 124.31. Accordingly, where the regulations do not require a meeting, it is clear that the applicant does not need to provide a meeting summary. With respect to the information repository requirement of § 270.30(m), EPA will follow the general principles applicable to the inclusion of the § 270.30 ''boilerplate'' provisions in HSWA portions of RCRA permits (*see, e.g., In re General Motors Corp.*, RCRA Appeal Nos. 90–24, 90–25, at 23 (EAB Nov. 6, 1992)). Finally, §§ 270.62 and 270.66 apply only where EPA has permit issuance authority over incinerators and BIFs, respectively, so there is no need to limit the applicability of the specific requirements added to these sections today.

B. Schedules and Requirements for Authorization

40 CFR 271.21(e) requires States with final authorization to modify their programs to reflect federal program changes and submit the modifications to EPA for approval. The deadlines for State modifications are set out in § 271.21(e)(2) and depend upon the date of promulgation of final rules by EPA. Thus, because EPA has promulgated today's rule before June 30, 1996, States must modify their programs, if necessary, to adopt this rule before July 1, 1997 (or July 1, 1998 if a State statutory change is needed). States then must submit these program modifications to EPA according to the schedules in § 271.21(e)(4). Once EPA approves the modifications, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs may already have requirements similar to those we are proposing today. EPA has not assessed these State regulations against the final federal regulations to determine whether they meet the tests for authorization. Thus, similar provisions of State law are not authorized to operate in lieu of today's RCRA requirements until the State submits them to EPA, who then evaluates them against the final EPA regulations. Of course, States may continue to administer and enforce their existing standards in the meantime.

In developing today's final rule, EPA considered impacts on existing State programs. The public participation requirements may be viewed as performance objectives the Agency wants States to meet in their own authorized programs. It is not EPA's intent to restrict States from conducting similar activities that accomplish the same objectives. Therefore, EPA intends to be flexible in reviewing State program submissions and evaluating them against the requirements for authorization.

VI. Permits Improvement Team

In July 1994, EPA created a group of EPA, State, Tribal and local government officials (Permits Improvement Team) to examine and propose improvements to EPA's permit programs. As part of its efforts, the Permits Improvement Team is examining ways to streamline the permitting process, exploring possible alternatives to individual permits, and evaluating ways to enhance public involvement in the permitting process. The Team plans to develop recommendations in each of these areas, discuss them with stakeholders, and submit them to Agency management for consideration.

The public participation requirements that EPA is promulgating in today's rule are appropriate for the RCRA permitting program as it currently exists. If, however, the nature of the RCRA permitting program changes as a result of the Permits Improvement Team's efforts, then the Agency may amend these procedures, or develop additional procedures. For example, the Team is considering recommending several alternatives to individual permits, such as establishing general permits for RCRA non-commercial storage and treatment units. The process of issuing general permits is very different from the current RCRA permitting process; thus, different approaches for involving the public may be appropriate.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the regulatory action.

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 serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this rule is not a significant rule under Executive Order 12866. Pursuant to the terms of Executive Order 12866, this section of the preamble summarizes the potential economic impacts of the RCRA Expanded Public Participation rule.

Based upon the economic impact analysis for today's rule, the Agency's best estimate is that the expanded public participation requirements would result in an incremental national annual cost of $180,000 to $500,000.

A complete discussion of the economic impact analysis is available in the regulatory docket for today's rule in a report entitled ''Economic Impact Analysis for the RCRA Expanded Public Participation Rule.''

Cost Analysis. Today's rule includes several requirements that would result in direct costs to facilities submitting initial permit applications or submitting permit renewal applications that propose a significant change for facility operations (see § 124.31). The analysis estimates the costs to all affected facilities of (1) preparing a public notice announcing the intention to hold a public meeting; (2) disseminating the public notice in a local newspaper, over a broadcast medium, and by posting a sign; and (3) holding a public meeting and preparing a meeting summary.

In addition, the rule gives the Director the discretion to require a facility to set up an information repository, based on the level of public interest or other factors. This requirement can apply anywhere in the permitting process or at any time during the active life of a facility.

The total cost per facility of the above requirements is approximately $5,000 to $14,000. Over the next ten years, EPA estimates that between 300 to 450 facilities will incur these costs. The resulting total national annual cost, assuming a discount rate of 7% is estimated to be between $180,000 to $500,000 per year.

Summary of Benefits. The RCRA permitting program was developed to protect human health and the environment from the risks posed by the treatment, storage, and disposal of hazardous waste. By improving and clarifying the permitting process, today's rule produces environmental benefits that result from a more efficient permitting process. The following is an explanation of how each of the provisions of today's rule provides benefits.

The main benefit of the expanded public participation requirements of today's rule is to provide earlier opportunities for public involvement and expand public access to information throughout the permitting process and the operational lives of facilities. EPA believes that these requirements will give applicants and permitting agencies a better opportunity to address public concerns in making decisions about the facility and in subsequent permitting activities.

Providing the public with an expanded role in the permit process, by promoting community participation and

input throughout the permitting process, will also help foster continued community involvement after facilities become permitted.

In addition, expanding public involvement opportunities could, in some cases, streamline the permitting process, since the public will raise issues, and the applicant can address the issues, at an earlier stage in the process. Currently, the public is not formally involved in the permitting process until the draft permit stage, which occurs after the permitting agency and the permit applicant have discussed crucial parts of the part B permit application. The Agency anticipates that the earlier participation provided in this rule will address the public concern that major permit decisions may be made before the public has the opportunity to get involved in the process. This earlier involvement may well reduce costs associated with delays, litigation, and other products of disputes.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the RFA requires agencies to perform an initial screening analysis to determine whether small entities will be adversely affected by the regulation. If the analysis identifies affected small entities, then the agency must consider regulatory alternatives to mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and governmental jurisdictions subject to regulation.''

In developing today's rule for expanding public involvement in the RCRA permitting process, EPA was sensitive to the needs and concerns of small businesses. The provisions set forth the minimum requirements necessary to fulfill the public involvement objectives in this rule. Additional examples of activities that facilities may choose to conduct are provided in the preamble for the proposed rule (59 FR 28680) and will be included in a future guidance document, rather than in this rule. EPA's intent is to provide flexibility for a facility to determine, in view of the facility-specific circumstances, the appropriate level of public involvement activities. In addition, EPA recognizes that, in some situations, an information repository could become resource-intensive for a facility or for the local community. EPA has addressed this concern by clarifying, in the final rule, that the information repository is not mandatory for all facilities. The rule makes clear our intent that the Director reserve the use of the information repository option only for the limited number of facilities that raise high levels of public interest or whose communities have a special need for more access to information.

EPA conducted a small entity impact screening analysis for the proposed rule and determined that there were no small entities significantly impacted (see 59 FR 28680–28711, Section VI.C.). Because the public participation requirements have not increased since the proposal, EPA has determined that the final rule also does not significantly impact small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0149.

This collection of information is estimated to have a public reporting burden averaging 89.60 hours per response, and to require 34.60 hours per recordkeeper annually. This total includes time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

Display of OMB Control Numbers. EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the UMRA), P.L. 104–4, EPA generally must prepare a written statement, including a cost-benefit analysis, for rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them about compliance with the regulatory requirements.

For the reasons explained in Section VI.A. above, EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Rather, EPA projects the total annual costs imposed by today's rule to be less than $500,000. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated above, the total costs of the rule are very low. These minimal costs will be incurred by owners and operators of hazardous waste treatment, storage and disposal facilities, which are principally private entities, and federal government agencies. Accordingly, this rule does not impose any requirements that might significantly or uniquely affect small governments.

E. Enhancing the Intergovernmental Partnership

Executive Order 12875. Executive Order 12875 on enhancing the intergovernmental partnership charges federal agencies with establishing meaningful consultation and collaboration with State and local governments on matters that affect them. In most cases, State governments are the level of government that regulates hazardous waste.

EPA has consulted with State officials to develop today's rule. EPA invited several States, representing various parts of the country, to participate in this rulemaking process. These States reviewed and provided feedback on the draft proposal over a period of eight months, and the draft final rule over a period of five months. In addition, these States participated in monthly workgroup meetings via conference call. Their participation and immediate feedback in the workgroup process added considerable value to the rulemaking effort.

EPA contacted additional States in an effort to receive their specific feedback on general permitting and public involvement techniques. EPA solicited State input during a session of the 3rd Annual RCRA Public Involvement National Conference, in which sixteen State representatives participated. The State participants provided numerous helpful suggestions and ideas. In addition, the Agency utilized existing State groups, such as the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), to solicit input on the proposed rule at various stages in the development process. State personnel at the Commissioner level provided input to EPA at bi-monthly meetings of the EPA-State Task Force on Hazardous Waste Management. Through early involvement in the process, State representatives made valuable contributions to the development of today's rule. EPA also received comments from several States following publication of the proposed rule. Many of the States' concerns are addressed by the final rule.

The Relationship of Today's Rule with Indian Policy. Currently, EPA has the responsibility for ensuring the implementation and enforcement of the Subtitle C hazardous waste regulatory program on Indian lands. This responsibility includes the issuance of hazardous waste permits. However, consistent with EPA's Indian Policy of 1984, the Agency will look directly to, and work with, Tribal governments in determining the best way to implement the public involvement requirements in Indian country. This Indian policy recognizes the sovereignty of federally-recognized Tribes and commits EPA to a government-to-government relationship with the Tribes.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 124

Administrative practice and procedure, Hazardous Waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Waste treatment and disposal.

Dated: October 18, 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 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB Control No.
* * * * *	
PART 124—PROCEDURES FOR DECISIONMAKING	
124.31	2050–0149
124.32	2050–0149
124.33	2050–0149
PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM	
270.62	2050–0149
270.66	2050–0149
40 CFR Citation	OMB Control No.
* * * * *	

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Subpart B is amended by adding text to read as follows:

Subpart B—Specific Procedures Applicable to RCRA Permits

Sec.

124.31 Pre-application public notice and meeting.
124.32 Public notice requirements at the application stage.
124.33 Information repository.

Subpart B—Specific Procedure Applicable to RCRA Permits

§ 124.31 Pre-application public meeting and notice.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a ''significant change'' is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary

opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b).

(d) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

(1) The applicant shall provide public notice in all of the following forms:

(i) *A newspaper advertisement.* The applicant shall publish a notice, fulfilling the requirements in paragraph (d)(2) of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Director shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(ii) *A visible and accessible sign.* The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (d)(2) of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(iii) *A broadcast media announcement.* The applicant shall broadcast a notice, fulfilling the requirements in paragraph (d)(2) of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Director.

(iv) *A notice to the permitting agency.* The applicant shall send a copy of the newspaper notice to the permitting agency and to the appropriate units of State and local government, in accordance with § 124.10(c)(1)(x).

(2) The notices required under paragraph (d)(1) of this section must include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(v) The name, address, and telephone number of a contact person for the applicant.

§ 124.32 Public notice requirements at the application stage.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Director shall provide public notice as set forth in § 124.10(c)(1)(ix), and notice to appropriate units of State and local government as set forth in § 124.10(c)(1)(x), that a part B permit application has been submitted to the Agency and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) The location where copies of the permit application and any supporting documents can be viewed and copied;

(v) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

(vi) The date that the application was submitted.

(c) Concurrent with the notice required under § 124.32(b) of this subpart, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

§ 124.33 Information repository.

(a) *Applicability.* The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units over which EPA has permit issuance authority. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(b) The Director may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director shall notify the facility that it must establish and maintain an information repository. (See 40 CFR 270.30(m) for similar provisions relating to the information repository during the life of a permit).

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established. The Director shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Director finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Director shall specify a more appropriate site.

(e) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and

updating the repository with appropriate information throughout a time period specified by the Director. The Director may close the repository at his or her discretion, based on the factors in paragraph (b) of this section.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.2 is amended by revising the definition for ''Facility mailing list'' to read as follows:

§ 270.2 Definitions.

* * * * *

Facility mailing list means the mailing list for a facility maintained by EPA in accordance with 40 CFR 124.10(c)(1)(ix).

* * * * *

3. Section 270.14 is amended by adding paragraph (b)(22) to read as follows:

§ 270.14 Contents of part B: General requirements.

* * * * *

(b) * * *

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under § 124.31(c).

4. Section 270.30 is amended by adding paragraph (m) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(m) *Information repository.* The Director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 CFR 124.33(b). The information repository will be governed by the provisions in 40 CFR 124.33(c) through (f).

5. Section 270.61(b)(5) introductory text is amended by removing the reference § 124.11(b) and adding in its place § 124.10(b).

* * * * *

6. In § 270.62, paragraphs (b)(6) through (10) are redesignated as paragraphs (b)(7) through (11), and new paragraph (b)(6) is added as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *

(6) The Director must send a notice to all persons on the facility mailing list as set forth in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as set forth in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice must contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the permitting agency's contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

* * * * *

7. Paragraph (d) of § 270.62 is revised as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(d) For the purpose of determining feasibility of compliance with the performance standards of § 264.343 of this chapter and of determining adequate operating conditions under § 264.345 of this chapter, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with § 270.19(b) and paragraphs (b)(2) through (b)(5) and (b)(7) through (b)(10) of this section or, instead, submit other information as specified in § 270.19(c). The Director must announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of paragraph (b)(6) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under § 270.19(a) are exempt from compliance with 40 CFR 264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in paragraph (b)(7) of this section, with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the Director to establish a later date for submission of the part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the Director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

8. In § 270.66, paragraphs (d) (3) through (5) are redesignated as paragraphs (d) (4) through (6), and new paragraph (d)(3) is added to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(d) * * *

(3) The Director must send a notice to all persons on the facility mailing list as set forth in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as set forth in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice must contain:

(A) The name and telephone number of applicant's contact person;

(B) The name and telephone number of the permitting agency contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

* * * * *

9. Paragraph (g) of § 270.66 is revised as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(g) *Interim status boilers and industrial furnaces.* For the purpose of determining feasibility of compliance with the performance standards of § 266.104 through 266.107 of this chapter and of determining adequate operating conditions under § 266.103 of this chapter, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of § 266.103 of this chapter must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in § 270.22(a)(6). The Director must announce his or her intention to approve of the trial burn plan in accordance with the timing and distribution requirements of paragraph (d)(3) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in paragraph (f) of this section with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the Director to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the Director.

[FR Doc. 95–29896 Filed 12–8–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[SC–029–1–7177a; FRL–5316–5]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the South Carolina State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the South Carolina State Implementation Plan (SIP) to incorporate new permitting regulations and to allow the State of South Carolina to issue Federally enforceable state construction and operating permits (FESCOP). On July 12, 1995, the State of South Carolina through the Department of Health and Environmental Control (DHEC) submitted a SIP revision which updates the procedural rules governing the issuance of air permits in South Carolina and fulfills the requirements necessary for a state FESCOP program to become Federally enforceable. In order to extend the Federal enforceability of South Carolina's FESCOP program to hazardous air pollutants (HAPs), EPA is also approving South Carolina's FESCOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that South Carolina may issue Federally enforceable construction and operating permits for HAPs.

DATES: This final rule will be effective February 11, 1996, unless adverse or critical comments are received by January 10, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Scott Miller at the EPA Regional office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

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

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

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is (404) 347–3555 extension 4153. Reference file SC029.

SUPPLEMENTARY INFORMATION: On July 12, 1995, the State of South Carolina through the DHEC submitted a SIP revision designed to allow South Carolina to issue FESCOP which conform to EPA requirements for Federal enforceability as specified in a Federal Register notice, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules.'' (See 54 FR 22274, June 28, 1989). This voluntary SIP revision allows EPA and citizens under the Act to enforce terms and conditions of state-issued minor source construction and operating permits. Construction and operating permits that are issued under the State's minor source construction and operating permit program that is approved into the State SIP and under section 112(l) will provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable construction and operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements. EPA notes that the State will continue to issue construction and operating permits that are not intended to be Federally enforceable under regulations found at South Carolina Air Pollution Control Regulation (SCAPCR) 61–62.1 Section II.A and Section II.B.

In the aforementioned June 28, 1989, Federal Register document, EPA listed five criteria necessary to make a state agency's minor source construction and operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the State's minor source construction and operating permit program.

The first criterion for a State's construction and operating permit program to become Federally enforceable is EPA's approval of the permit program into the SIP. On July 12, 1995, the State of South Carolina submitted through the DHEC a SIP revision designed to meet the five criteria for Federal enforceability. This action will approve these regulations

into the South Carolina SIP, and therefore satisfy the first criterion for Federal enforceability.

The second criterion for a state's construction and operating permit program to be Federally enforceable is that the regulations approved into the SIP must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. SCAPCR 61–62.1 Section II imposes a legal obligation that construction and operating permit holders adhere to the terms and limitations of the construction or operating permit intended to be Federally enforceable. Every construction and operating permit must include all applicable State and Federal requirements. In addition, the permits must include monitoring, recordkeeping, efficiency levels for add-on air pollution control devices, and other provisions to show compliance with the terms and conditions of the construction/operating permit. Hence, the second criterion for Federal enforceability is met.

The third criterion for a state's construction and operating permit program to be Federally enforceable is that the state construction and operating permit program must require that all emissions limitations, controls, and other requirements imposed by the permit be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''Federally enforceable'' (e.g. standards established under sections 111 and 112 of the Act). SCAPCR 61–62.1 Section II G(8)(b)(vii) mandates that every construction and operating permit that a facility intends to be Federally enforceable must include all applicable State and Federal requirements. SIP requirements are applicable Federal requirements and therefore, will not be waived or made less stringent since they must be included in any permit intended to be Federally enforceable. Therefore, the third criterion for Federal enforceability is met.

The fourth criterion for a state's construction and operating permit program to be Federally enforceable is that limitations, controls, and requirements in the operating permits be permanent, quantifiable, and otherwise enforceable as a practical matter. SCAPCR 61–62.1 Section II G(4)(f) includes a verbatim incorporation of this requirement. Also, with respect to this criterion, enforceability is essentially provided on a permit-by-permit basis, particularly by writing practical and quantitative enforcement procedures into each permit. Therefore, the fourth criterion for Federal enforceability is met.

The fifth criterion for a state's construction and operating permit program to be Federally enforceable is providing EPA and the public with timely notice of the proposal and issuance of such permits, providing EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. SCAPCR 61–62.1 Section II G(5)(a) requires that a permit intended to be Federally enforceable shall be provided to EPA and the public for a period of 30 days prior to its issuance. In addition, if the State determines that a public hearing is required the State will give notice of a public hearing 30 days before it occurs. SCAPCR 61–62.1 Section II G(4)(g) requires DHEC to provide to EPA on a timely basis a copy of each proposed (draft permit) or final permit intended to be Federally enforceable. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review under the South Carolina FESCOP program will not be Federally enforceable. Hence, the fifth criteria for Federal enforceability is met.

In addition to meeting the five criteria for issuance of Federally enforceable construction and operating permits, the State provides for the issuance of Federally enforceable general permits which may cover several air pollution sources in a source category with one permit. These regulations mirror the part 70 regulations found at 40 CFR 70.6(d) which govern the issuance of title V general permits.

In addition to requesting approval into the SIP, South Carolina also requested on July 12, 1995, approval of its FESCOP program under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAPs through the issuance of Federally enforceable state construction and operating permits. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants.

EPA believes that the five criteria for Federal enforceability are also appropriate for evaluating and approving FESCOP programs under section 112(l). The June 28, 1989, Federal Register document did not specifically address HAPs because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a FESCOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FESCOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the CAA. (See 58 FR 62262, November 26, 1993.) EPA currently anticipates that these regulatory criteria, as they apply to FESCOP programs, will mirror those set forth in the June 28, 1989, Federal Register document. The EPA also anticipates that since FESCOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to the Subpart E revisions. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is to say, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is

approving South Carolina's FESCOP program so that South Carolina may issue Federally enforceable construction and operating permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes South Carolina's FESCOP program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, Federal Register document is met. That is to say, South Carolina's program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes South Carolina has demonstrated that it will provide for adequate resources to support the FESCOP program. EPA expects that resources will continue to be adequate to administer that portion of the State's minor source construction and operating permit program under which Federally enforceable construction and operating permits will be issued since South Carolina has administered a minor source construction and operating permit program for a number of years. EPA will monitor South Carolina's implementation of its FESCOP program to ensure that adequate resources are in fact available. EPA also believes that South Carolina's FESCOP program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in South Carolina's FESCOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes South Carolina's program is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as major sources by obtaining Federally enforceable limits on potential to emit.

Eligibility for Federally enforceable permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the State's current rule prior to the effective date of today's rulemaking. If the State followed its own regulation, each issued permit that established a title I condition (e.g., for a source to have minor source potential to emit) was subject to public notice and prior EPA review.

Therefore, EPA will consider all such construction and operating permits which were issued in a manner consistent with both the State regulations and the five criteria as Federally enforceable upon the effective date of this action provided that any permits that the State wishes to make Federally enforceable are submitted to EPA and accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity with program requirements.

With South Carolina's addition of these provisions and EPA's approval of this revision into the SIP, South Carolina's FESCOP program satisfies the criteria described in the June 28, 1989, Federal Register document.

Final Action

In this action, EPA is approving South Carolina's air permitting regulations as submitted on July 12, 1995. EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 9, 1996 unless, within 30 days of its publication, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 9, 1996.

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

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

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

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

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

SIP Actions

SIP approvals under 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

Unfunded Mandates Reform Act of 1995

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

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: September 20, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart PP—South Carolina

2. Section 52.2120 is amended by adding paragraph (c)(40) to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(40) The minor source operating permit program for South Carolina, submitted by the Department of Health and Environmental Control on July 12, 1995, and as part of the South Carolina SIP.

(i) Incorporation by reference.

(A) Regulation 61–62.1, Section I.3, 13, 19, 50, 72, and 73, Section II.F.2, Section II.F.2.e, Section II.G, and Section II.H of the South Carolina SIP which became effective on June 23, 1995.

(ii) Other material. None.

[FR Doc. 95–30110 Filed 12–8–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300406; FRL–4989–6]

RIN 2070–AB78

Carbofuran; Tolerance Extension for Canola

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide 2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate (common name ''carbofuran'') and its metabolites in or on canola at 1.0 part per million (ppm) for an additional 1-year period, to February 22, 1998. EPA is issuing this rule on its own initiative following a request from the U.S. Canola Association to allow the use of carbofuran on canola in the 1996 growing season.

EFFECTIVE DATE: This regulation becomes effective December 11, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300406], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM 1B2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP-300406] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail: edwards.dennis @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of November 8, 1994 (59 FR 55605), which announced that on its own initiative and under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), it proposed a time-limited, regionally restricted tolerance for the residues of carbofuran and its metaboites in or on canola at 1.0 ppm. EPA proposed the tolerance because canola treated with carbofuran may not be processed in the U.S. and must be exported to Canada. A 2-year time-limited tolerance was established by a rule in the Federal Register of February 22, 1995 (60 FR 9781), with an expiration date of February 22, 1997. Registrations associated with this tolerance will be regionally restricted to Idaho, Minnesota, Montana, North Dakota, and Washington.

In Federal Register of October 25, 1995 (60 FR 54685), EPA issued a notice of receipt of a request from the U.S. Canola Association asking for a 1-year extension of the canola tolerance. This extension would then allow the use of carbofuran on canola in the 1996 growing season. The use of carbofuran

on canola will remain regionally restricted and time-limited because of a concern for avian toxicity. The use is extended for the 1996 growing season only. The Agency expects to register an alternative chemical in late 1995 for early season control of the flea beetle. This may be available in limited quantities for the 1996 growing season, and fully available thereafter.

The Interregional Research Project No. 4 (IR-4) plans to submit a petition for a permanent tolerance for carbofuran on canola in late 1995 or early 1996. However, because of the known hazard of carbofuran to birds and wildlife, EPA will not establish a permanent tolerance until the Agency has fully evaluated risks to wildlife.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule of November 8, 1994 (59 FR 55605). Based on that data and information considered, the Agency concludes that extension of the time-limited tolerance will continue to protect the public health. Therefore, the time-limited tolerance is extended for an additional 1-year period.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [OPP-300406] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 1B2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.254 [Amended]

2. In § 180.254 *Carbofuran; tolerances for residues*, by amending paragraph (c) in the introductory text by changing the date ''February 22, 1997'' to read ''February 22, 1998''.

[FR Doc. 95–30115 Filed 12–6–95; 4:03 pm]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 411

[BPD–850–F]

Medicare Program; Physician Self-Referral Regulations: Change in Date for Submission of Group Attestation Statement

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule—Technical amendment.

SUMMARY: This final rule changes (delays) the date by which a group of

physicians that wishes to be identified as a group practice for purposes of the physician self-referral regulations (42 CFR 411.350 through 411.361) must file a statement attesting that it meets certain specified conditions.

DATES: These regulations are effective on December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Snyder (attestation issues) (410) 786–5991, Betty Burrier (other physician referral issues) (410) 786–4649.

SUPPLEMENTARY INFORMATION:

I. Background

On August 14, 1995, we published, at 60 FR 41914, a final rule with comment period entitled, ''Medicare program; Physician Financial Relationships With, and Referrals to, Health Care Entities That Furnish Clinical Laboratory Services and Financial Relationship Reporting Requirements.'' That rule specified that, if a physician or a member of a physician's immediate family has a financial relationship with an entity, the physician may not make referrals to the entity for the furnishing of clinical laboratory services under the Medicare program except under specified circumstances. Under the rule, being designated as a group practice may enable a group of physicians to meet the conditions that would qualify it for an exception to the prohibition on referrals. Specifically, the rule required, at § 411.360 (a) and (b), that a group of physicians that intends to be identified as a group practice (as defined at § 411.351) submit a written statement to attest that, during the most recent 12-month period (calendar year, fiscal year, or immediately preceding 12-month period), 75 percent of the total patient care services of group practice members was furnished through the group, was billed under a billing number assigned to the group, and the amounts so received were treated as receipts of the group. In the case of a newly formed group practice, the group would submit a statement to attest that during the next calendar year, fiscal year, or 12-month period, it expects to meet the 75-percent standard. The rule further required, at § 411.360(e), that the attestation be submitted to the appropriate Medicare carrier by December 12, 1995.

II. Provisions of This Rule

This rule changes the above submittal date to require that the attestation statement be submitted no later than 60 days after receipt of instructions from the carrier.

We have been in the process of developing a method for groups to provide us with their attestation statements. However, we have come to realize that those individuals who would be completing the attestation statement need to be offered more guidance than we had originally anticipated providing in the attestation instructions. The attestation instructions will not be available early enough to give the respondents sufficient time to submit the statement by the deadline stated in the regulations. Therefore, this final rule revises § 411.360(e) to require that the attestation be submitted no later than 60 days after receipt of the attestation instructions from the carrier. In the interim, a group of physicians can regard itself as a group practice if it believes it meets the definition of group practice that was incorporated in our regulations, at § 411.351, by the August 14 rule.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques. Therefore, we are soliciting public comment on each of these issues for the information collection requirement discussed below.

Section 411.360 contains a requirement concerning those groups of physicians attempting to be identified as a ''group practice.'' It specifies that the group must attest that, in the aggregate, 75 percent of total patient care services furnished by all physician members are (or, in the case of a newly formed group, are expected to be) furnished through the group and billed under a billing number assigned to the group. This information collection requirement was established by the August 14, 1995 rule discussed earlier. As stated in the August 14, 1995 rule, public reporting burden for this collection of information is estimated to be 1 hour per response. Organizations and individuals were given an opportunity to comment on the information collection requirements at the time the August 14 rule was published. However, because this rule changes the date by which the attestation must be submitted, we are again soliciting public comment on this requirement and providing the 60-day notice. As also stated in the August 14 rule, a document will be published in the Federal Register after Office of Management and Budget approval is obtained.

Organizations and individuals desiring to submit comments on these information collection and recordkeeping requirements should mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–850–F, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21224–1850.

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

As required by the Administrative Procedure Act, we generally provide notice and opportunity for comment on regulations and provide that final rules are not effective until 30 days after the date of publication unless we can find good cause for waiving the notice-and-comment procedure and delayed effective date as impracticable, unnecessary, or contrary to the public interest.

Unless the requirement at § 411.360(e) is revised before December 12, 1995, the regulations would contain a requirement that, through no fault of their own, groups of physicians would be unable to meet. Therefore, we find good cause to waive the notice-and-comment procedure as being contrary to the public interest. We also find good cause to waive the delay in effective date.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This rule merely makes a technical amendment to delay the due date for the submission, by a group of physicians that wishes to be identified as a ''group practice,'' of a statement attesting that it meets certain conditions. For this reason, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 411

Kidney diseases, Medicare, Physician referral, Reporting and recordkeeping requirements.

42 CFR part 411 is amended as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATION ON MEDICARE PAYMENT

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 411.360, paragraph (e) is revised to read as follows:

§ 411.360 Group practice attestation.

* * * * *

(e) A group that intends to meet the definition of a group practice in order to qualify for an exception described in §§ 411.355 through 411.357, must submit the attestation required by paragraph (a) or paragraph (b)(1) of this section, as applicable, to its carrier no later than 60 days after receipt of the attestation instructions from its carrier.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 21, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 29, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–30064 Filed 12–8–95; 8:45 am]

BILLING CODE 4120–01–P

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42 CFR Part 424

[BPD–838–FC]

RIN 0938–AH19

Medicare Program; Additional Supplier Standards

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment.

SUMMARY: This final rule with comment period conforms our regulations to changes made to section 1834 of the Social Security Act (the Act) by section 131 of the Social Security Act Amendments of 1994. Section 1834(j) of the Act requires that suppliers meet additional standards related to compliance with State and Federal licensure requirements, maintaining a physical facility on an appropriate site, and proof of appropriate liability insurance. This final rule retains existing regulatory standards and incorporates the three additional standards specifically cited from the statute.

DATES: Effective Date: This rule is effective January 1, 1996.

Comments: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 9, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–838–FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–838–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Larry Bonander, (410) 786–4479.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

The Medicare Part B program is a voluntary program that pays all or part of the costs for physicians' services, outpatient hospital services, certain home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities, and certain other medical and hospital health services not covered by Medicare Part A.

Medicare services are furnished by two types of entities, that is, providers and suppliers. The term ''provider'' as defined in our regulations at 42 CFR 400.202, means a hospital, a rural primary care hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare. A clinic, a rehabilitation agency, or a public health agency that has a similar agreement to furnish outpatient physical therapy or speech pathology services, or a community mental health center with a similar agreement to furnish partial hospitalization services, is also considered a provider (see sections 1861(u) and 1866(e) of the Social Security Act (the Act)).

In general, suppliers are individuals or entities that furnish certain types of medical and other health services under part B. There are different definitions of the term supplier and specific regulations governing different types of suppliers. Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) encompasses the types of items included in the definition of ''medical equipment and supplies'' found at section 1834(j)(5) of the Act. In

this rule, the term ''DMEPOS supplier'' refers to all individuals or entities that furnish these items.

For purposes of DMEPOS supplier standards, the term ''supplier'' is currently defined in § 424.57(a) as an entity or individual, including a physician or part A provider, which sells or rents part B covered items to Medicare beneficiaries, and which meets certain standards. We are retaining this definition for purposes of identifying those entities that must meet Medicare DMEPOS supplier standards in order to obtain a supplier number. Those individuals or entities that do not furnish DMEPOS items but only furnish other types of health care services, such as physicians' services or nurse practitioner services, would not be subject to these standards. Moreover, a supplier number is not necessary before Medicare payment can be made with respect to medical equipment and supplies furnished incident to a physician's service.

For Medicare purposes, DMEPOS suppliers either accept or do not accept assignment. If a DMEPOS supplier accepts assignment, it agrees to accept the Medicare approved amount as payment in full for the covered item. Generally, Medicare pays 80 percent of the approved amount and the beneficiary is responsible for applicable coinsurance and any unmet Medicare deductible amounts. DMEPOS suppliers that have voluntarily agreed to enter into an agreement to accept assignment for all items are referred to as ''participating suppliers''. Participating DMEPOS suppliers are listed in directories available to Medicare beneficiaries and receive part B payment directly from the Medicare program. Nonparticipating DMEPOS suppliers may accept assignment on a case-by-case basis, and for these claims, receive payment directly from Medicare. If a beneficiary receives a service from a nonparticipating DMEPOS supplier on a nonassigned basis, however, payment is made to the beneficiary who in turn pays the DMEPOS supplier. This rule applies to all DMEPOS suppliers for all items furnished to Medicare beneficiaries regardless of whether they accept Medicare assignment or are Medicare participating suppliers.

Durable Medical Equipment

Durable medical equipment (DME) is included in the definition of ''medical and other health services'' as indicated by section 1861(s)(6) of the Act. The term DME is defined at section 1861(n) of the Act. This definition, in part, excludes from coverage as DME, items furnished in skilled nursing facilities and hospitals. (Equipment furnished in those facilities is paid for as part of their routine or ancillary costs.) The term is also defined in § 414.202 as meaning ''equipment, furnished by a supplier or a home health agency that—

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to an individual in the absence of an illness or injury; and

(4) Is appropriate for use in the home.'' Examples of DME include such items as blood glucose monitors, hospital beds, nebulizers, oxygen delivery systems, and wheelchairs.

Prosthetic Devices

Prosthetic devices are also included in the definition of ''medical and other health services'' under section 1861(s)(8) of the Act. They are defined in this section of the Act as ''devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens''. Other examples of prosthetic devices include cardiac pacemakers, cochlear implants, electrical continence aids, electrical nerve stimulators, and tracheostomy speaking valves.

Orthotics and Prosthetics

Section 1861(s)(9) of the Act provides for the coverage of ''leg, arm, back, and neck braces, and artificial legs, arms, and eyes * * *'' under the term ''medical and other health services''. As indicated by section 1834(h)(4)(C) of the Act, these items are often referred to as ''orthotics and prosthetics.''

Supplies

Section 1861(s)(5) includes ''surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;'' as one of the ''medical and other health services'' that is covered by Medicare. Other items that may be furnished by suppliers would include (among others):

(1) Prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which payment is made under this title, and that are furnished within a certain time period after the date of the transplant procedure as noted at section 1861(s)(2)(J) of the Act.

(2) Extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes as listed at section 1861(s)(12) of the Act.

(3) Home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies included at section 1861(s)(2)(F) of the Act.

(4) Oral drugs prescribed for use as an anticancer therapeutic agent as noted at section 1861(s)(2)(Q) of the Act.

(5) Self-administered erythropoietin (as described in section 1861(s)(2)(O) of the Act).

B. DMEPOS Supplier Standards

On June 18, 1992, we published a final rule with comment period (57 FR 27290) that established in § 424.57 certain business standards for entities seeking to qualify as Medicare suppliers of DMEPOS items. Currently, in order to obtain a Medicare billing number, a DMEPOS supplier is required to meet, and to certify that it meets, the following supplier standards:

1. Respond to orders received by filling those orders from its own inventory or inventory from other companies with which it has contracted to fill such orders; or fabricating or fitting items for sale from supplies purchased under a contract.

2. Be responsible for delivery of Medicare covered items to Medicare beneficiaries.

3. Honor all warranties express and implied under applicable State law.

4. Answer any questions or complaints a beneficiary has about the item or use of the item that was sold or rented to him or her, and refer beneficiaries with Medicare questions to the appropriate carrier.

5. Maintain and repair items rented to beneficiaries directly or through a service contract with another company.

6. Accept returns of substandard (less than full quality for the particular item) or unsuitable items (inappropriate for the beneficiary at the time it was fitted and/or sold) from beneficiaries.

7. Disclose consumer information to each beneficiary who rents or purchases items. This information consists of the supplier standards to which it must conform.

8. Comply with the disclosure provisions in § 420.206 (Disclosure of persons having ownership, financial, or control interest).

C. Obtaining a DMEPOS Supplier Number for Identification and Billing Purposes

Since November 1, 1993, every DMEPOS supplier that submits claims to a Durable Medical Equipment Regional Carrier (DMERC) is required to complete and return the Medicare

Supplier Number Application (HCFA–192 Form) to the National Supplier Clearinghouse (NSC). The NSC distributes applications, verifies the data, issues numbers to approved suppliers, and maintains a national supplier file. The DMEPOS supplier must obtain a supplier number from the NSC before the DMERC will accept a claim. If the DMEPOS supplier attempts to file a claim before obtaining a supplier number the DMERC will reject the claim.

Under this final rule, in order to obtain a Medicare supplier number, a DMEPOS supplier will be required to meet, and to certify that it meets, the supplier standards found in the new § 424.57 as discussed in section II. of this rule. The DMEPOS supplier standards found in the new § 424.57 include the supplier standards that are in the existing § 424.57, and also the standards cited in section 1834(j)(1)(B)(ii) (I) through (III) of the Act.

The DMEPOS supplier's certification that supplier standards are met must be completed before a supplier number will be issued by the NSC. The DMEPOS supplier is accountable to complete the application accurately. Any deliberate misrepresentation or concealment of material information may subject the DMEPOS supplier to liability under civil and criminal laws. Every three years the DMEPOS supplier is required to recertify that it continues to meet the DMEPOS supplier standards.

II. Provisions of the Final Regulation

Section 131 of the Social Security Act Amendments of 1994 (SSA '94, Pub. L. 103–432, enacted on October 31, 1994), added a new subsection (j) to section 1834 of the Act. Section 1834(j)(1)(B)(i) of the Act requires that for medical equipment and supplies furnished on or after October 31, 1994, and before January 1, 1996, the supplier must meet the current standards established in § 424.57. Section 1834(j)(1)(B)(ii) of the Act requires that for medical equipment and supplies furnished on or after January 1, 1996, the supplier must meet revised standards issued by the Secretary, after consultation with representatives of suppliers of medical equipment and supplies, carriers, and consumers.

As a result of SSA '94, we are establishing additional DMEPOS supplier standards by revising paragraph (c) of § 424.57 of the regulations. The revised standards include all of the standards that are in the existing § 424.57 and those standards specifically required by section 1834(j)(1)(B)(ii) (I) through (III) of the Act.

Beginning January 1, 1996, a supplier will be required to meet, and to certify that it meets, the existing standards discussed in section C. of this rule, and also the following additional standards. The supplier must—

(1) Comply with all applicable State and Federal licensure and regulatory requirements;

(2) Maintain a physical facility on an appropriate site; and

(3) Have proof of appropriate liability insurance.

We are issuing this final rule to incorporate those standards that Congress has explicitly identified and indicated should be used beginning January 1, 1996. In addition, our existing regulatory standards have already been subject to the notice and comment process, and both the public and the industry are familiar with those standards. Congress did not indicate any intention to relax those standards. Rather, we believe Congress' intent is to strengthen these standards to protect Medicare beneficiaries. This final rule will provide a base level of protection that will enable us to continue to process applications of individuals and entities who seek to become suppliers, and will provide a basis to revoke the numbers of suppliers who do not fulfill those standards according to our regulations at § 405.874.

The statute also gives the Secretary the authority to establish additional standards besides those included in the existing § 424.57 and those standards specifically cited in section 1834(j)(1)(B)(ii) (I) through (III). As directed by the statute, we have contacted or consulted with representatives of suppliers, carriers, and consumers concerning the need for additional supplier standards. These meetings were productive and we have received numerous comments that suggest that additional standards may be necessary in certain areas. We are currently considering these comments as we develop a proposed rule that would set forth additional substantive supplier standards. At this time, however, we are retaining our existing standards and only adding those standards specifically cited from section 1834(j) of the Act.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques. Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

The following sections of this document contain information collection requirements as described below:

The information collection requirements in § 424.57 (''Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing numbers''), in paragraph (c)(7), arise as a result of requiring all DMEPOS suppliers to give a copy of the DMEPOS supplier standards to each Medicare beneficiary with whom they do business. The National Supplier Clearinghouse will supply a copy to each enrolled supplier which may be photocopied. We estimate the public reporting burden for this collection of information to average approximately 20 minutes per year, including photocopying and handing out the standards, which totals approximately 46,200 hours.

The information collection requirements in § 424.57(c)(8) cross refers to § 420.206 (''Disclosure of persons having ownership, financial, or control interest'') concern the information necessary for disclosure of ownership and control and the identities of managing employees. The respondents who will provide the information will be the DMEPOS suppliers. Public reporting burden for this collection of information is estimated to be 140,000 hours. We estimate that 140,000 suppliers will complete the information which is estimated at one hour per supplier.

We have submitted a copy of this final rule with comment period to OMB for its review of the information collection requirements in § 424.57(c) (7) and (8). These requirements are not effective until they have been approved by OMB. A notice will be published in the

Federal Register when approval is obtained.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should send them to the Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850 and to the Office of Management and Budget official whose name appears in the **ADDRESSES** section of this preamble.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of Prior Notice With Comment Period and of Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking for a rule to provide a period of public comment prior to the effective date of the rule. This procedure can be waived, however, when an agency finds good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest. Further, we generally provide for final rules to be effective no sooner than 30 days after the date of publication unless we find good cause to waive the delay.

In the case of this rule, we find good cause to implement this rule as a final rule because the delay involved in the prior notice and comment procedures for these DMEPOS supplier standards would be contrary to the public interest. In SSA '94, Congress enacted numerous substantive provisions designed to protect Medicare beneficiaries from abusive practices by DMEPOS suppliers. These provisions establish limitations on the information DMEPOS suppliers may include on a certificate of medical necessity (section 1834(j)(2)), establish restrictions on the methods DMEPOS suppliers may use to contact certain Medicare beneficiaries (section 1834(a)(17)), and limit the Medicare beneficiary's liability if the DMEPOS supplier does not comply with these statutory requirements (section 1834(j)(4)). Congress has also established significant penalties, including civil money penalties, if DMEPOS suppliers violate particular statutory provisions (section 1834(a)(18)(B)). Most importantly, for purposes of this regulation, Congress has indicated that beginning January 1, 1996, individuals or entities must meet at least three additional standards in order to obtain a Medicare supplier number.

When considered as a whole, these legislative changes demonstrate that Congress has serious concerns about the business practices employed by certain DMEPOS suppliers, and that Medicare beneficiaries require additional protection from these practices. It would, therefore, be contrary to the public interest to delay establishing the specific additional criteria that Congress has identified by adhering to the normal notice and comment procedures. In addition, as noted previously, the Secretary has already established certain regulatory standards for DMEPOS suppliers that were developed in accordance with the notice and comment procedures. These standards are familiar to the public and the regulated DMEPOS supplier community and provide a base level of protection for Medicare beneficiaries. Congress has not indicated any intention to reduce or eliminate these existing standards. It is necessary to maintain these existing regulatory standards in order to protect the public interest and to further our efforts to prevent fraud and abuse in the Medicare program through Operation Restore Trust.

As directed by statute, we have met with representatives of DMEPOS suppliers, the carriers, and consumers to consider whether additional standards are necessary. Although these meetings were productive, it was not possible to complete the full notice and comment procedure in order to have final rules in place before January 1, 1996. We are currently preparing a notice of proposed rulemaking reflecting our consultations with these entities and individuals and will publish that document in the near future. These final rules will be effective until altered by those regulations.

We believe that it would be contrary to public interest to delay implementation of the revised standards pending the process of publishing both a proposed rule and a final rule. The three new standards are required to be included in any new standards promulgated by the Secretary, and are not discretionary. Moreover, the existing DMEPOS standards had been promulgated in accordance with the notice and comment provisions of the Administrative Procedure Act. Therefore, we find good cause to waive proposed rulemaking for the revised requirements set forth in § 424.57 and to issue these regulations in final. However, we are providing a 60-day period for public comment, as indicated at the beginning of this rule, on the changes to § 424.57. For the above reasons, we also find good cause to waive the delay in effective date of this rule.

VI. Regulatory Impact Analysis

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all providers, physicians, and other suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final rule was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 424 is amended as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302, and 1395hh).

2. Paragraph (c) of § 424.57 is revised to read as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing numbers.

* * * * *

(c) Medicare does not issue a billing number to a supplier that submits claims for items listed in § 421.210(b) of this subchapter until that supplier meets, and certifies that it meets, the following standards. The supplier—

(1) In response to orders which it receives, fills those orders from its own inventory or inventory in other companies with which it has contracted to fill such orders or fabricates or fits items for sale from supplies it buys under a contract;

(2) Is responsible for delivery of Medicare covered items to Medicare beneficiaries;

(3) Honors all warranties express and implied under applicable State law;

(4) Answers any questions or complaints a beneficiary has about the item or use of the item that was sold or rented to him or her, and refers beneficiaries with Medicare questions to the appropriate carrier;

(5) Maintains and repairs directly or through a service contract with another company, items it has rented to beneficiaries;

(6) Accepts returns of substandard (less than full quality for the particular item) or unsuitable items (inappropriate for the beneficiary at the time it was fitted and/or sold) from beneficiaries;

(7) Discloses consumer information to each beneficiary with whom it does business which consists of the supplier standards to which it must conform;

(8) Complies with the disclosure provisions in § 420.206.

(9) Complies with all applicable State and Federal licensure and regulatory requirements;

(10) Maintains a physical facility on an appropriate site; and

(11) Has proof of appropriate liability insurance.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 22, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–30065 Filed 12–8–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amendment 1–272]

Organization and Delegation of Powers and Duties; Transfer of Great Lakes Pilotage Authority From the Coast Guard to the Saint Lawrence Seaway Development Corporation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard's responsibility for administering the Secretary's functions under the Great Lakes Pilotage Act of 1960, as amended, and the Secretary's authority to enter into, revise, or amend arrangements with Canada, are being transferred to the Saint Lawrence Seaway Development Corporation. This rule affirms the interim final rule amending the delegations to be in accordance with the changed responsibilities. Although a comment period for the Secretary's delegations is not required by the Administrative Procedure Act, the Department of Transportation requested public comment on the interim final rule because of public and Congressional interest in Great Lakes Pilotage. This final rule responds to the comments and is necessary to inform the public that the interim final rule has been affirmed.

DATES: This rule is effective on December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, United States Department of Transportation, 400 7th Street SW., Washington, DC 20590.

REGULATORY HISTORY: On July 31, 1995, the Department of Transportation (Department) published an interim final rule with request for comments (60 FR 38971). The interim final rule contained language that would transfer Great Lakes Pilotage authority from the Coast Guard to the St. Lawrence Seaway Development Corporation (SLSDC). The comment period for the interim final rule ended on September 29, 1995, and was to become effective October 30, 1995. On October 27, 1995, the Department issued a rule suspending the effectiveness of the interim final rule. This final rule affirms the interim final rule and establishes a new effective date.

SUPPLEMENTARY INFORMATION: The Coast Guard's responsibility for administering the Secretary's functions under the Great Lakes Pilotage Act of 1960, as amended, (the Act) is being transferred to the SLSDC. This rule amends the delegations and enabling regulations to be in accordance with the changed responsibilities. The functions that are being transferred are: (1) Investigation and prosecution of violations of the Act; (2) registration, qualification, and training of registered pilots; (3) association working rules and dispatching procedures; (4) pilot working conditions; (5) selection of pilots; (6) number of pilots; (7) availability of pilots; (8) number of pilotage pools; (9) articles of association; (10) auditing; and (11) ratemaking. The licensing of pilots and the investigation and prosecution of marine accidents and incidents are essential Coast Guard safety functions that are separate from the Act and Great Lakes Pilotage Regulations. These functions will remain with the Coast Guard.

Transfer of pilotage responsibilities to the SLSDC will place pilotage under permanent civilian authority, and placing pilotage in a smaller organization with an established presence on the Great Lakes will give pilotage issues greater visibility and more timely attention. In addition, the SLSDC is being given authority to negotiate directly with Canada, which will allow timely adjustments to pilotage rates. The lack of timely adjustments has been a subject of past pilot criticism.

The Secretary's authority to enter into, revise, or amend arrangements with Canada is being delegated to the SLSDC Administrator in coordination with the General Counsel of the Department. A Memorandum of Arrangements between the United States and Canada, last renegotiated in 1977, states that the Secretary and the Minister of Transport of Canada ''will arrange for the establishment of regulations imposing identical rates, charges, and any other conditions or terms for services of pilots in the waters of the Great Lakes. * * *.'' In 1983, the Act was amended to provide that the ''Secretary, subject to the concurrence of the Secretary of State, may make agreements with the appropriate agency of Canada to * * * prescribe joint or identical rates and charges .''

Discussion of Comments and Changes

The Department received comments from well over 100 commenters regarding the transfer of Great Lakes Pilotage oversight from the Coast Guard to the SLSDC. Comments on the interim final rule were received from Federal and State legislators, pilot associations

and their employees, individual pilots, professional maritime organizations, shipping associations, port authorities, labor organizations, marine service companies, an environmental group, one State regulatory agency, and interested members of the public.

The interim final rule was supported in comments from Members of Congress, individual members of the public, port authorities, labor organizations, professional maritime organizations, pilot organizations, pilots, a pilot association and its employees, and marine service companies. Among the organizations supporting the rule is the owner and operator of one of the largest fleet of Great Lakes-dedicated deep sea ships; this organization is also one of the largest consumers of pilotage services in the St. Lawrence Seaway system. Also in support of the rule was the Association of Great Lakes Ports, representing the public port authorities of Green Bay, Milwaukee, Chicago, Burns Harbor, Detroit, Monroe, Toledo, Cleveland, Erie, Ogdensburg, Superior, and Oswego. Comments in support of the transfer of delegation also came from the International Longshoremen's Association (ILA) and individual ports, representing approximately 95,000 members and associated parties. A subgroup of the ILA, representing approximately 10,000 members, the International Organization of Masters, Mates and Pilots, is in favor of transferring delegation from the Coast Guard, but want it moved to an ''Undersecretary'' in the Department. Of the three Great Lakes pilot associations, District 2 favors the transfer to SLSDC. As of the close of the comment period, there were 12 pilots in District 2.

Those in favor gave the following reasons in support of the transfer of delegation: (1) the SLSDC is a smaller organization than the Coast Guard, and it can significantly reduce the amount of ''red tape'' associated with pilotage oversight; (2) the SLSDC is a civilian agency, and it can guarantee a civilian Director of Great Lakes Pilotage with better continuity than a military Director; (3) the SLSDC's focus is on the Great Lakes; (4) pilotage issues would receive more attention from the Administrator of the SLSDC and the Secretary of Transportation; and (5) the SLSDC's interaction with all elements of the Great Lakes community would give the pilots significant new contacts with their customer base.

The interim final rule was opposed in comments from Members of Congress and State legislators, pilot associations and their employees, individual pilots, professional maritime organizations, shipping associations, an environmental group, one State regulatory agency, and interested members of the public. Among the organizations opposed to the transfer are the American Pilots Association, Save The River, Inc., Lake Carriers' Association, and the Association of International Ship Masters, which represents about 3,000 to 5,000 members. Of the three Great Lakes pilot associations, Districts 1 and 3 oppose the transfer. As of the close of the comment period, there were 9 pilots in District 1 and 19 pilots in District 3.

Those objecting to the transfer of authority did so for the following reasons: (1) The SLSDC is primarily concerned with economic and financial issues, and, because of this focus, it will sacrifice safety by reducing American pilotage jobs and pay, increasing hours of service, or taking other actions that will have an impact on the working conditions of pilots and, therefore, the protection of the environment; (2) many of the functions being transferred to the SLSDC are related to both safety and economics; (3) the SLSDC does not have the knowledge to oversee pilotage or negotiate with Canadian officials regarding pilotage issues; (4) the Coast Guard's recent transfer of Great Lakes pilotage oversight to the newly-established National Maritime Center (NMC) reduces red tape, and establishes a civilian Director without the need for a transfer; (5) the fate of the SLSDC is in transition because of the DOT's restructuring plans, and this restructuring will remove the SLSDC and Great Lakes pilotage from government oversight; (6) there should have been more public input and more information published regarding the transfer of authority, including extensive public hearings; (7) the interim final rule violated the notice and comment requirements of the Administrative Procedure Act (APA); and (8) Congress intended that pilotage functions remain in the Coast Guard.

The Department agrees with those commenters who stated that many of the 11 functions being transferred to the SLSDC relate in part to safety as well as economics. While the interim final rule stated that those functions ''are considered to have economic effects,'' the Department did not mean to imply that only economic functions could be transferred. The fact that there are safety ramifications involved, however, should not, and does not, disqualify SLSDC as the agency in which the authority should reside.

Some commenters opposing the rule pointed to a November 1994 Coast Guard memorandum approved by the Secretary; attached to the November 1994 memorandum is an options paper, which noted that both safety and economic functions are vested in the Director of Great Lakes Pilotage, and that the registration of pilots is a safety function. It also acknowledged that some economic issues such as travel and work-hour limits also have safety implications (e.g., their effect on fatigue). Four options for Departmental oversight of Great Lakes pilotage functions, each listing pros and cons were provided: (1) Separate safety and economic oversight; (2) retain in the Coast Guard; (3) transfer to the Office of the Secretary (OST); and (4) transfer to SLSDC/MARAD.

Included in this last option was the following statement: ''A transfer to SLSDC or MARAD may have an adverse impact on safety because the mission of each agency is economic in nature and primarily associated with promotion of shipping.'' The memorandum that the Secretary approved recommended that the responsibility for safety aspects of Great Lakes pilotage remain with the Coast Guard, but that economic elements of pilotage oversight be transferred to another Department office or agency. It also recommended that a Great Lakes Pilotage Working Group (Working Group) be formed to develop this option.

The Working Group was formed and included representatives from OST, the Coast Guard, MARAD, and SLSDC. In developing the option that SLSDC should assume responsibility for the 11 Great Lakes pilotage functions, the Final Report of the Working Group was not inconsistent with the November 1994 memorandum, which had stated that a transfer to SLSDC may have an adverse impact on safety. The Final Report listed the functions to be transferred under the heading, ''Economic Functions,'' and it referred to them as ''essentially economic functions. * * *'' The Department believes that the 11 functions are essentially, though not entirely, economic functions. The option in the November 1994 memorandum that contained the ''adverse impact on safety'' statement envisioned the transfer to SLSDC of not only the 11 ''essentially economic'' functions, but the following two safety functions as well: (1) The licensing of pilots and (2) the investigation and prosecution of marine accidents and incidents.

The Final Report judged these to be essential Coast Guard functions solely related to safety, and said they should remain with the Coast Guard. Similarly, the November 1994 memorandum intended that responsibility for only the safety aspects of Great Lakes pilotage

remain with the Coast Guard, but not those ''essentially economic'' functions that also have safety ramifications. In fact, the Final Report stated that the Working Group believed that the transfer of the 11 functions out of the Coast Guard—to any other recipient, including the SLSDC—would not have a detrimental effect on safety.

Moreover, to the extent the functions involve safety, the Department has determined there is no problem transferring them to the SLSDC. As described below, the SLSDC has significant safety responsibilities, which it has performed successfully for over thirty-five years. An examination of the SLSDC's operations shows that it has an impeccable safety record with respect to its authority over one of the most difficult sections of the entire Great Lakes/Saint Lawrence Seaway System. Furthermore, in implementing its safety responsibilities, there is no evidence that the SLSDC has ever sacrificed safety considerations for economic gain.

The SLSDC operates two locks, a fleet of vessels, maintains navigational aids, and carries out safety inspections of vessels. In the St. Lawrence Seaway System, the SLSDC works closely with the Coast Guard, and performs the same Captain-of-the-Port functions in the principal operating areas of the Seaway System that the Coast Guard performs elsewhere. In the Port and Tanker Safety Act of 1978, Congress expressly reserved that authority to the SLSDC.

In addition, the SLSDC has a comprehensive emergency response plan designed to protect the environment on the St. Lawrence River and adjacent areas. The plan directly involves U.S. and Canadian Federal, state, and local governments, private organizations, and other interested parties, including pilots. The plan is in place, is tested yearly, and has been used in actual circumstances twice with complete success. This year's drill included participation by Federal, state, and local agencies, in addition to representatives from U.S. and Canadian pilot organizations.

The SLSDC also has ample, long-standing safety law enforcement experience. It is responsible for administration of the Seaway Regulations and Rules (33 CFR Part 401) regarding the clearance, readiness, and operating requirements for safe passage of vessels transiting the St. Lawrence Seaway. It operates the Seaway under these regulations, which are jointly promulgated and enforced with the Canadian Saint Lawrence Seaway Authority and which contain many vessel safety rules. In addition, its Captain-of-the-Port responsibility carries with it enforcement authority, including the ability to fine for violations, which the SLSDC exercises under subpart B of part 401.

The SLSDC not only has this independent, significant law enforcement experience, but under an agreement with the Coast Guard, the SLSDC coordinates the exercise of its authority with related enforcement activities of the Coast Guard, including those related to pilotage. Moreover, the SLSDC's personnel carry out many of the Coast Guard inspection and related functions for the Coast Guard, including inspections performed by the SLSDC in Canadian waters before vessels transit the Seaway. In this regard, the SLSDC has the added advantages of long-standing, joint enforcement with Canada of laws and regulations relative to the Seaway, including safety laws and regulations, and ready, cooperative access to Canadian waters for joint as well as U.S. law enforcement purposes.

Several commenters cited the SLSDC's handling of an incident involving the M/T CONCORDE as a demonstration of the SLSDC's concern for economics over safety, alleging that the SLSDC permitted a master who was drunk to pilot a vessel alone. This refers to an incident in which it was reported to U.S. and Canadian authorities that the master of the M/T CONCORDE may have been intoxicated. Upon learning of these allegations, the St. Lawrence Seaway Pilots Association (SLSPA) requested permission to assign two pilots to the vessel. In response to the allegations of intoxication, the M/T CONCORDE was boarded by the Coast Guard and the master was given a breathalyzer test. The master not only passed the breathalyzer test, but he showed no signs of misuse of alcohol. As a result of the U.S. Coast Guard boarding, the Coast Guard, the SLSDC, and the Canadian Great Lakes Pilotage Authority cleared the M/T CONCORDE to proceed on its voyage without restriction with one pilot. Accordingly, the Department finds no basis for the position of those commenters who described this incident as an example of the SLSDC favoring economics over safety. Rather, the Department believes that it is an excellent example of coordination and cooperation among the Coast Guard, SLSDC, and Canadian authorities regarding safety issues that affect the entire St. Lawrence Seaway.

Some commenters objected to the interim final rule's characterization that it was issued in response to ''pilot concerns;'' they argued instead that it was issued in response to outside political pressure. Some commenters stated that the transfer of authority is supported by only one Great Lakes Registered pilot, and is opposed by all three Great Lakes pilot associations.

The Department's examination of a possible transfer of Great Lakes pilotage authority was the result of a request from a delegation of interested persons, which included the President of a Great Lakes Pilot Association (also Vice President of the American Pilots Association for the Great Lakes), and President of the American Pilots Association. These organizations expressed concerns on behalf of their members about the lengthy ratemaking process and the lack of prompt attention given to pilotage issues. The Department continued its examination and discovered that similar concerns were expressed by many other interested parties throughout the Great Lakes. Commenters who believe the transfer of authority is not supported by any pilots are incorrect. While two Great Lakes Pilot Associations are opposed to the transfer, one Great Lakes Pilot Association supports the transfer. Letters of support for the transfer were also received from individual Great Lakes Registered Pilots, and from many other interested Great Lakes parties. The Department did not issue the interim final rule in response to Congressional pressure. Although the Department has received some Congressional support for the transfer, it has also received letters from individual Members of Congress expressing misgivings.

Some commenters contended that the SLSDC lacks the knowledge or experience to negotiate issues with Canada. The Department disagrees. The SLSDC has over thirty-five years of experience in direct negotiations with the government of Canada over the Joint Tariff of Tolls, Joint Seaway Operating Regulations, and other matters of mutual concern. Moreover, the SLSDC has daily contact and coordination of activities and implementation of policies with the Great Lakes Pilotage Authority, Ltd. and the Canadian Seaway authority. In this respect, the SLSDC is experienced in, and well suited to, the role of negotiator on pilotage matters with the Canadian government.

Some commenters stated that out of the 12 or so reviewers of rate adjustments, the SLSDC is the one agency that consistently opposed rate adjustments and was responsible for slowing down or halting the process. The Department, however, has found the opposite to be true. The Department has checked its records for the last seven years, the time during which a rulemaking data base has been kept, and, in that time period, the SLSDC has

not opposed rate adjustments or been responsible for slowing down or halting the process.

Some commenters declared that only the Coast Guard has pilotage expertise such as the experience to determine who is qualified to be a registered pilot. We are aware, too, that the Inspector General of the Department has sent a letter to Congressman David Obey, claiming that the SLSDC has no experience or expertise in many, if not all, of the responsibilities to be transferred. (The Inspector General also has raised this concern in the Department's coordination of the interim final rule.) The pilotage expertise resides in the Coast Guard's Great Lakes Pilotage Staff (the Staff), which is comprised of the Director of Great Lakes Pilotage, a Transportation Specialist who serves as the Assistant Director, and an Economist; the Staff and, thus, the expertise will transfer in its entirety to the SLSDC when the functions are transferred. Those who are executing the Great Lakes pilotage program now, including enforcement of the Act, will continue to do so after the transfer.

The Staff will continue to operate in the SLSDC in the same manner in which it has operated in the Coast Guard. In preparation for the upcoming winter meetings of the three pilot associations, the Director of Great Lakes Pilotage has written to each of the association presidents to make them aware of pilotage issues that he would like to discuss. In each letter, the Director stated that he would like to reach an agreement on how the process can be improved. ''Identifying the areas where we need better procedures is beneficial to the system and the goals of safety. In the spirit of partnership, I hope we can improve the process together.'' These same goals are transferring to the SLSDC with the Director.

Moreover, since shortly before its transfer to the NMC in July 1995, the Staff has performed its Great Lakes pilotage responsibilities without receiving any specialized Coast Guard support to enable the Staff to perform these responsibilities better. It is not clear, therefore, why some believe that the expertise will suddenly evaporate when the Staff is transferred to the SLSDC. Furthermore, the SLSDC itself has developed an expertise in pilotage issues; it has directed vessel traffic in the Seaway system for decades and in so doing has substantial experience in dealing with pilots and pilotage matters. To the extent the Coast Guard has some special expertise necessary for a particular matter, the Staff can obtain Coast Guard support regardless of where the Staff is located.

Some commenters questioned Department statements that the current Director of Great Lakes Pilotage has ten years of experience in Great Lakes Pilotage issues. The person who is the current Director became the Assistant Chief of the Coast Guard's Merchant Vessel Personnel Division in January 1985. As Assistant Chief, the Coast Guard's Pilotage Staff reported to him, and he was involved in every major pilotage policy decision. Since the function was moved from Cleveland to Washington, DC in 1990, he has been the alternate Director of Great Lakes Pilotage, that is, the person acting as Director in the latter's absence. In 1994, he assumed his present duties as Director of Great Lakes Pilotage. In addition, his career includes over 20 years of experience as a merchant marine officer, an officer in charge of U.S. naval vessels, navigation and seamanship instructor at the U.S. Naval Academy, and head of the Navigation Department at the Maritime Institute of Technology and Graduate Studies, an advanced school operated by the International Organization of Masters, Mates and Pilots. The Assistant Chief of the Pilotage staff also has many years of experience as a merchant marine officer, has commanded a vessel, and is a licensed first class pilot on the Great Lakes.

Some commenters asked what the relationship would be between the Coast Guard and the SLSDC after the transfer of delegation of pilotage functions. The Department expects the Coast Guard and SLSDC to continue their current strong relationship of cooperation and coordination. Concerning pilotage on the Great Lakes, the Coast Guard will continue to perform the functions of evaluating, testing, grading, issuing and upgrading pilot licenses, investigating accidents and other infractions, and suspending or revoking pilot licenses. The SLSDC will perform all other functions related to Great Lakes registered pilots. The Coast Guard and SLSDC will enter into a Memorandum of Agreement (MOA) to ensure coordination and cooperation between the parties.

One commenter argued that giving SLSDC the authority to enter into, revise, or amend arrangements with Canada with respect to pilotage rates, which until now has been reserved to the Secretary, may cost U.S. jobs as a bargaining tool to extract concessions from Canada on Seaway tolls. The Department disagrees. The transfer of the delegation of authority does not affect pilotage jobs, pay, or working conditions, increase hours of service, or impact adversely on safety or the environment. There is no connection between negotiations with Canada on Seaway tolls and on pilotage rates. Pilotage rates are now set in accordance with the published methodology; because rules setting pilotage rates generally are significant, Department policy requires that they be coordinated with and cleared through several Department offices and agencies before negotiations with Canada begin. Those negotiations were routinely conducted in the past by Coast Guard staff in Cleveland with no involvement by the Office of the Secretary or any of the other Department agencies. Under this delegation, the Secretary's authority to enter into, revise, or amend arrangements with Canada must be coordinated by SLSDC with the General Counsel of the Department, in the Office of the Secretary.

That same commenter averred that the May 1972 Great Lakes Pilotage Review by the Department said that the significant policy leadership and review function must be retained by the Office of the Secretary. Policy review and oversight of pilotage is so retained. The Secretary is transferring one of his responsibilities from one agency that reports to him (the Coast Guard) to another (the SLSDC). He is not abrogating his responsibilities. The pilotage functions and personnel positions created to carry them out are designed to ensure that those responsibilities will be fully met. The individuals who occupy the positions must meet the requirements and qualifications demanded of those positions, irrespective of the agency in which they reside.

The same commenter claimed that it is the layers of review by the Office of the Secretary (OST), not the size of the Coast Guard or negotiations with Canada, that have created the less than timely attention to pilotage issues and less than timely rate adjustments. Again, the Department disagrees. Coordination by OST allows review among interested Department elements. This review is necessary in the Department's decision-making process. The Department's experience shows that OST review has not caused unreasonable delay. Furthermore, there are no ''layers of review;'' review by OST and other interested elements is accomplished in one step and the document is then sent to the Secretary for approval.

On the other hand, there can be multiple layers of review in Department agencies before a document is submitted to OST for coordination. Although approvals can take varying amounts of

time, the Department has no doubt that the SLSDC, with a short review process, will be able to give more timely attention to pilotage issues and make more timely rate adjustments than would the Coast Guard, including the NMC. In addition, a transfer to the SLSDC would guarantee that there would always be a civilian Director of Great Lakes Pilotage.

Some commenters believe that the transfer should not take place during the busiest part of the shipping season, *i.e.*, November and December. These commenters indicated that a transfer at this time will disrupt pilotage operations. They cited the Final Report, which says that a target date for the transfer of March 31 is believed to be necessary to minimize disruption to the operation of the pilotage pools. If the Working Group believed that there would have been disruption had the transfer taken place in April, the commenters argued, how could there not be disruption to the operation of the pilotage pools during the height of the shipping season?

The Department expects no disruption to pilotage operations, notwithstanding the position of the Working Group. The transfer does not in any way represent a shift in pilotage policies or operations. It only affects the internal delegation of responsibilities within the Department. There should be no negative effect on pilotage service. This rule will not change the pilotage rules and the manner in which they are administered, make the pilots employees of the SLSDC, or change the status or organizational structure under which the pilots now function. As it is with the Coast Guard, pilotage safety will remain the paramount concern of the SLSDC and will not become secondary to economic considerations. Since the Great Lakes Pilotage Staff is transferring with the functions, the only expected change is that the phone numbers for the Great Lakes Pilotage Staff will change. The new phone numbers will be widely distributed, and will not cause a disruption to pilotage operations.

The DOT restructuring, if it occurs, will not remove Great Lakes pilotage from Federal government oversight. The Administrator will always exercise authority over Great Lakes pilotage under a delegation from the Secretary of Transportation and his successors. The transfer would not compromise the Secretary's ability to intervene in pilotage issues should that become necessary. Even if the SLSDC were to become separate from the Department, the legislation proposed by the Administration to accomplish this would provide for continued delegation of Secretarial authority to the SLSDC. The SLSDC would also remain a wholly-owned Federal government agency. The proposed legislation, in pertinent part, reads as follows:

(b) Section 1 of the Act of May 13, 1954, Public Law 358 (33 U.S.C. 981), as amended, is amended to read as follows:

''(a) There is hereby created a body corporate to be known as the Saint Lawrence Seaway Development Corporation (hereinafter referred to as the 'Corporation').

''(b) The Secretary of Transportation may delegate his or her authority to the Administrator as the Secretary deems appropriate or as directed by law.''

Thus the Secretary's ability to intervene would continue. If the legislation is enacted, the manner in which the Secretary's oversight of Great Lakes pilotage would be carried out would be set forth in a document to be published in the Federal Register.

In a ''voice mail'' communication from counsel for the SLSPA to an OST staff attorney, an additional argument against the transfer was posed. A memorandum concerning this communication has been entered into the docket. SLSPA's counsel points out that the Great Lakes Pilotage Act is set forth in section 46 of the United States Code (U.S.C.), which contains the following definition at 46 U.S.C. 2101:

(34) ''Secretary'', except in part H, means the head of the department in which the Coast Guard is operating.

Since Great Lakes Pilotage is contained in Part F, this definition of ''Secretary'' pertains to it. The SLSPA maintains that whatever Congress intended to reside within the Coast Guard is contained within Title 46 under this definition and that, therefore, this transfer to the SLSDC would be in contravention of Congressional intent.

Three Members of Congress submitted to the Secretary the House Report for the legislation that defines ''Secretary.'' The report states: '' 'Section 2101(34) defines 'Secretary' so that maritime safety and seamen's welfare jurisdiction remains within the Coast Guard at all times.'' They also refer to 46 U.S.C. 2104(a), which states that ''[t]he Secretary may delegate the duties and powers conferred by this subtitle [which includes Great Lakes pilotage] to any officer, employer, or member of the Coast Guard * * *.'' The Congressmen conclude that the House Report and the statutory section concerning delegation ''appear to confirm Congress's determination that [Great Lakes pilotage functions] reside with the Coast Guard.''

The definition of ''Secretary,'' which is clear on its face, does not change with the transfer of pilotage authority to the SLSDC. The Secretary of Transportation is still the head of the Department in which the Coast Guard is operating. Upon declaration of war or when the President directs, the Coast Guard would operate in the Navy (14 U.S.C. 3). In that event, the Secretary of Defense would be the head of the Department in which the Coast Guard is operating. (*N.B.*: even during the Vietnam War and the Persian Gulf War, the Coast Guard remained part of the Department of Transportation.) The House Report explanation is not the statutory definition. Even if it were the statutory definition, it says that maritime safety is to remain in the Coast Guard at all times. While many of the 11 functions to be transferred have safety ramifications, they are still essentially economic. The House Report language did not address where functions should reside that fall outside the parameters of maritime safety and seamen's welfare jurisdiction.

That Congress did not intend that all statutory authority that comes under the above-cited definition of Secretary reside in the Coast Guard is demonstrated by the Port and Tanker Safety Act of 1978. That Act contains the following definition at 33 U.S.C. 1222:

(2) ''Secretary'' means the Secretary of the department in which the Coast Guard is operating.

Nevertheless, that Act also states that certain authority granted to the Secretary shall not be delegated to any agency other than the Saint Lawrence Seaway Development Corporation (33 USC 1229). Thus, Congress envisioned a situation in which authority residing within the ''Department in which the Coast Guard is operating'' not only could be delegated to an agency within the Department of Transportation that was not the Coast Guard, but must not be delegated to the Coast Guard. Moreover, by this language, Congress has also demonstrated that, when it intends for authority to remain within one agency and not be delegated elsewhere, it will so state.

Furthermore, had Congress desired that the Great Lakes pilotage function remain solely within the Coast Guard, it could have given the authority directly to the Commandant instead of the Secretary. By contrast, in other circumstances, Congress has given authority, not first to the Secretary to be delegated, but directly to the Federal Aviation Administrator and to the Federal Highway Administrator. For example, the Intermodal Surface Transportation Efficiency Act of 1991

(section 6016) directs the Federal Highway Administrator to conduct certain studies, while legislation concerning nationality and ownership of aircraft as well as safety regulation of civil aeronautics gives authority to the Federal Aviation Administrator (49 U.S.C. 44101 *et seq.*; 49 U.S.C. 44701 through 44717, 44720 through 44722). (*N.B.*: Within the safety regulation chapter, three sections, 49 U.S.C. 44718, 44719, and 44723, set forth requirements for the Secretary.)

Moreover, the Department of Transportation Act (Public Law 89–670, 1966) (DOT Act), which created the Department, specifically authorized the Federal Railroad Administrator and the Federal Highway Administrator to carry out certain functions, powers, and duties of the Secretary (section 6(f)(3)(A) and (3)(B)). Unlike 46 U.S.C. 2104(a), which states that the Secretary ''may'' delegate duties and powers to any officer, employee, or member of the Coast Guard, the DOT Act stated that the Federal Railroad and Highway Administrators ''shall'' carry out the functions, duties, and powers of the Secretary. In addition, the DOT Act did not authorize the Commandant of the Coast Guard to carry out the functions, powers, and duties of the Secretary regarding Great Lakes pilotage. On the contrary, the DOT Act, which transferred the Coast Guard to the Department, also transferred to, and vested in the Secretary, the functions, powers, and duties relating to the Coast Guard (section 6(b)(1)).

In a formal comment to the docket, the SLSPA also argued that the interim final rule violated the notice and comment requirements of the APA. It asserted that the statutory exemption from the notice and comment requirements does not extend to ''any action which goes beyond formality and substantially affects the rights of those over whom the agency exercises authority.'' [citation omitted.] The SLSPA concluded that since this rule affects timeliness and, therefore, substantially affects the rights of pilots, the exemption does not apply. It pointed to the timely adjustments to pilotage rates as demonstrating the effect of the rule on the rights of pilots. It contended that the Department failed to provide a concise general statement of its basis and purpose, as required by the APA, and that no explanation was offered for overturning a regulation that ''has been in place since DOT was established in 1967.''

The Department disagrees. If the Department were to accept SLSPA's argument that, since the rule affects timeliness and, therefore, substantially affects the rights of pilots, all delegations of authority would have to be published for notice and comment. One of the paramount reasons for delegations is to reduce delays by eliminating needless work at the top levels. All delegations, therefore, can affect timeliness. Moreover, requesting public comment on delegations of authority is not required by the APA. 5 U.S.C. 553(b)(3)(A) states that the notice and comment requirements of the APA do not apply to rules of agency organization, procedure, or practice.

The Department, therefore, disagrees with SLSPA's contention that notice and comment are required for this delegation. In its discretion, however, the Department did offer a 60-day comment period; it even suspended the effectiveness of the interim final rule to allow the Department additional time to consider all the issues raised in the comments.

The Department disagrees with the SLSPA's APA argument that the Department did not provide a concise general statement of its basis and purpose and did not offer an explanation for overturning a regulation that had been in place since the Department was established. Putting aside the question of whether a concise general statement is even required, the Department provided one. The interim final rule stated that the transfer of responsibilities from the Coast Guard to the SLSDC ''will place pilotage under permanent civilian authority, and placing pilotage in a smaller organization with an established presence on the Great Lakes will give pilotage issues greater visibility and more timely attention. In addition, SLSDC is being given authority to negotiate directly with Canada, which will allow timely adjustments to pilotage rates.'' This statement contains the Department's basis and purpose for the change. A small SLSDC, when compared with the Coast Guard in general or even the NMC within the Coast Guard, will be able to give more timely attention to pilotage issues and make more timely rate adjustments.

Many commenters opposed to the transfer claimed that they were given no opportunity to have input into the process and therefore the interim final rule is invalid. The Department disagrees. As we have demonstrated earlier, a comment period is not required by the APA. Nevertheless, because of public and Congressional interest in Great Lakes pilotage, the Department took the extraordinary step of providing an opportunity for public comment on this rule and provided 60 days for the receipt of public comment. In accordance with its published procedures, the Department even accepted comments after the 60 days had elapsed. The Department, thus, has provided ample opportunity for public input and has thoroughly considered that input before issuing this rule.

Several commenters, however, requested that the Department hold a public hearing. Even with respect to rulemakings for which notice and comment are required, which this rulemaking is not, the APA gives the agency discretion to hold a public hearing or not. ''[T]he agency shall give interested persons an opportunity to participate in the rulemaking . . . with or without the opportunity for oral presentation.'' (5 U.S.C. 553(c).). By allowing interested persons to submit written views, the Department has provided the public with a greater opportunity to participate in a rule of agency organization, procedure, or practice than the APA requires. Moreover, in addition to providing the 60-day comment period, representatives from the Great Lakes Pilotage Staff and the SLSDC participated in a February 9, 1995, meeting in Chicago, organized by the Great Lakes Shipping Association, which represents vessel owners engaged in the international Great Lakes trades. Also in attendance were representatives from the three Great Lakes pilot associations and a large number of other industry representatives. At that meeting, the Staff and SLSDC representatives responded to questions from pilots and others for several hours concerning the possibility of a transfer.

In addition, during the winter of 1994–95, the Staff also met with the three pilot associations and presented to each of them a draft of the ''St. Lawrence Seaway Development Corporation Pilotage Concept,'' which included the SLSDC's 1995 plan. The plan comprised the SLSDC's 5-year performance goals, its 3-to-5-year business focus, and its 5-to-15-year strategic goals. The document emphasized the importance of the pilotage program and the SLSDC's role in the program, when it said, ''[t]he mission of the Great Lakes Pilotage Program is to protect the public, the environment, and the economic interests of foreign trade shippers by assuring that their vessels are safely navigated by competent and qualified U.S. registered pilots.'' Although the Staff orally requested that the associations provide reaction to this document, none was forthcoming.

In light of the many opportunities that the pilots have had to voice their opinions about the transfer and the exhaustive public record before the

Department, the Department concludes that holding a public hearing would not result in the presentation of additional or different information from what has already been submitted.

The Department stated in the interim final rule that it would consider any new matters presented and make changes if warranted. The Department has carefully considered all comments presented and concludes that no revisions to the interim final rule are warranted. Accordingly, the Department affirms, without change, the interim final rule.

A final rule redesignating those portions of the Coast Guard's Great Lakes Pilotage Regulations that are necessary for SLSDC to carry out its responsibilities under the Act will be published in the Federal Register shortly.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

Accordingly, 49 CFR part 1 is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.46 [Removed]

2. Section 1.46(a) is removed and reserved.

3. Section 1.52 is amended by adding a new paragraphs (d) and (e) to read as follows:

§ 1.52 Delegations to Saint Lawrence Seaway Development Corporation Administrator.

* * * * *

(d) Carry out the Great Lakes Pilotage Act of 1960, as amended, (46 U.S.C. 9301 *et seq.*).

(e) Under the 1977 Memorandum of Arrangements with Canada and the Great Lakes Pilotage Act of 1960, as amended in 1983 (46 U.S.C. 9305), enter into, revise, or amend arrangements with Canada in coordination with the General Counsel.

Issued at Washington, DC, this 5th day of December 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–30081 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–135; Amdt. 192–74A]

RIN 2137–AC32

Customer-Owned Service Lines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This action concerns a petition to reconsider the rule that requires operators of gas service lines who do not maintain certain buried customer piping to notify customers of the need for maintenance. The request to change the rule to clarify the exclusion of customer branch lines is granted because some operators are apparently misconstruing the rule to cover these lines. The request to change the rule to specify operator repair as a maintenance option is granted because a literal reading of the rule's definition of maintenance excludes this legitimate option.

EFFECTIVE DATE: January 10, 1996.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366–2392.

SUPPLEMENTARY INFORMATION: As directed by the 102d Congress (49 U.S.C. 60113(a)), RSPA issued a rule (49 CFR 192.16) that requires certain operators of gas service lines to notify their customers of the need to maintain buried customer piping (60 FR 41828, August 14, 1995). Operators subject to this rule are identified in the first paragraph of the rule, as follows:

§ 192.16 Customer Notification

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, ''maintain'' means monitor for corrosion according to § 192.465 if the customer's buried piping is metallic, survey for leaks according to § 192.723, and if an unsafe condition is found, either shut off the flow of gas or advise the customer of the need to repair the unsafe condition.

In a petition dated September 8, 1995, the American Gas Association (AGA) asked RSPA to reconsider this notification rule. AGA contends § 192.16(a) is deficient in two respects. First, AGA is concerned that § 192.16(a) does not indicate that branch lines, serving secondary equipment such as yard lanterns or pool heaters, are not part of the customer's buried piping that operators must maintain to qualify for exclusion from the rule. In fact, as AGA construes the rule, to avoid sending notifications operators would have to maintain most of these branch lines. For clarity, AGA recommends amending § 192.16(a) to refer to ''buried gas supply piping'' instead of ''buried piping.''

The amount of customer piping an operator must maintain to avoid sending customer notifications was a significant issue in this rulemaking proceeding. Of particular concern was buried piping that branches from the customer's primary gas supply line to serve secondary equipment, such as a yard lantern or pool heater. We addressed this issue in the final rule document as follows:

> [w]e intended the proposed rules to apply to customers' primary gas supply lines. Branch lines that serve pool heaters, yard lanterns, or other types of secondary equipment were not intended to be covered. The final rule (§ 192.16(a)) clarifies this point by covering customer piping up to gas utilization equipment only when the customer's piping does not enter a building. (60 FR 41822)

Given this history of § 192.16(a) and the plain meaning of the rule, we do not agree with AGA that the rule can reasonably be construed to apply to most branch lines serving yard lanterns or pool heaters. As AGA acknowledges in its petition, such lines typically do not enter buildings. Buried customer piping that does not enter a building is covered only if it serves the customer's principal gas utilization equipment. And by their very nature, branch lines do not serve principal gas utilization equipment.

Nevertheless, the existence of the AGA petition indicates that some service line operators may be misconstruing the rule. Since we want to make the rule as easy as possible for everyone to understand, we have amended § 192.16(a) to emphatically state that the customer's buried piping does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. We did not feel AGA's suggestion to modify ''piping'' with ''gas supply'' would necessarily clarify the rule because all customer piping provides a supply of gas.

Next, AGA argues that the definition of ''maintain'' is too restrictive because it does not mention repair as a method of remedying unsafe customer piping. As a result, AGA suggests § 192.16(a) could be construed to require operators to send customer notifications even if they repair unsafe conditions on customer piping. AGA recommends

amending the definition of ''maintain'' to include repair as a remedial measure.

We believe AGA's recommendation has merit. Operators may indeed choose to repair some unsafe conditions on customer piping without shutting off the gas or advising the customer of the problem. Such repair would be wholly consistent with the purpose of § 192.16—to promote the safety of customer piping—and would exceed the required minimum level of maintenance. Thus, operator repair should not be the basis for a charge of noncompliance with the rule. To preclude this possibility and clarify the rule, we have amended § 192.16(a) as AGA recommends in the second part of its petition.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB did not review this final rule. Also, DOT does not consider this final rule to be significant under its regulatory policies and procedures (44 FR 11034, February 26, 1979). Because this final rule merely clarifies an existing rule, the economic impact is too minimal to warrant an evaluation of costs and benefits. However, an evaluation of the costs and benefits of the rule revised by this regulatory action is available for review in the docket.

Executive Order 12612

We analyzed this final rule under the principles and criteria in Executive Order 12612 (''Federalism''). The final rule does not have sufficient federalism impacts to warrant preparation of a federalism assessment.

Regulatory Flexibility Act

I certify, under Section 605 of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities. As explained in Amendment 192–74 (60 FR 41828, August 14, 1995), most small entities do not come under the rule revised by this regulatory action, and those small entities that do may exercise very low cost means of compliance.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

RSPA amends 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.16(a) is revised to read as follows:

§ 192.16 Customer notification.

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, ''customer's buried piping'' does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. Also, ''maintain'' means monitor for corrosion according to § 192.465 if the customer's buried piping is metallic, survey for leaks according to § 192.723, and if an unsafe condition is found, shut off the flow of gas, advise the customer of the need to repair the unsafe condition, or repair the unsafe condition.

* * * * *

Issued in Washington, DC, on December 4, 1995.

Ana Sol Gutiérrez,

Deputy Administrator.

[FR Doc. 95–30032 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 951128281–5281–01; I.D. 112795A]

Groundfish of the Bering Sea and Aleutian Islands Area, Trawl Closure To Protect Red King Crab

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS has determined that an interim closure to all trawling is necessary in a portion of the Bristol Bay area of the Bering Sea. The number of female red king crab in Bristol Bay has declined to a level that presents a serious conservation problem for this stock. To prevent excessive bycatch rates of Bristol Bay area red king crab, NMFS is implementing an interim closure in an area of Bristol Bay to vessels using trawl gear. This management measure is intended to accomplish the objectives of the North Pacific Fishery Management Council with respect to fishery management in the Bering Sea and Aleutian Islands management area (BSAI).

DATES: Effective January 20, 1996, through March 31, 1996. Comments must be submitted by January 10, 1996.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel. The Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for proposed Amendment 37 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area addresses the action implemented under this inseason adjustment. Copies of the EA/RIR/IRFA may be obtained from the North Pacific Fishery Management Council, 605 W. 4th Ave. Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 675 and 676. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

High prohibited species bycatch rates may warrant inseason adjustment to close an area to fishing for groundfish. Authority for interim closures of a specific area is outlined under regulations at § 675.20(e). This inseason adjustment prohibits fishing for groundfish by operators of vessels using trawl gear in that portion of the Bering Sea that is bounded by a straight line connecting the following coordinates in the order listed below from January 20 through March 31, 1996:

56°00′ N.; 162°00′ W.;

56°00′ N.;	164°00′ W.;
57°00′ N.;	164°00′ W.;
57°00′ N.;	162°00′ W.; and
56°00′ N.;	162°00′ W.

This action is necessary to protect declining stocks of red king crab and to prevent an excessive share of red king crab from being taken by the groundfish trawl fisheries early in the fishing season.

The Red King Crab Savings Area (RKCSA), outlined above, was closed to vessels using non-pelagic trawl gear by emergency rule on January 20, 1995 (60 FR 4866, January 25, 1995) to protect declining stocks of red king crab. At that time the Council asked staff to further analyze alternative closure areas that could be implemented permanently under an FMP amendment to provide long-term protection to Bristol Bay red king crab. At its September 1995 meeting, the Council recommended implementation of proposed Amendment 37 to the FMP, an action similar to the emergency rule. This includes a closure of the RKCSA to vessels using non-pelagic trawl gear as well as an increase in observer coverage. The Council further expressed its intent that the closure be implemented in time for the 1996 trawl season, which starts January 20, 1996.

NMFS concurs that crab conservation concerns, as well as excessive red king crab bycatch rates historically experienced by the flatfish trawl fisheries early in the year, warrant timely action in 1996. Therefore, NMFS is implementing a modified version of the Council's recommended action via inseason adjustment authority under regulations at § 675.20(e). NMFS intends to initiate review of the Council's proposed Amendment 37 to the FMP as quickly as possible. If the amendment is approved by NMFS, the Council's preferred action would be effective for 1997 and beyond.

Under the 1995 emergency rule, NMFS required increased observer coverage on vessels fishing for flatfish in Zone 1 as well as on vessels fishing with pelagic trawl gear in the RKCSA. The extra observer coverage on the pelagic trawl vessels was implemented to ensure that the crab performance standard, established for pelagic trawl operators (§ 675.7(n)), could be monitored.

At its September 1995 meeting, the Council recommended that these increases in observer coverage be included as part of the proposed action under Amendment 37. The regulatory authority for inseason adjustment does not allow for increases in observer coverage. Therefore, NMFS is prohibiting the use of all trawl gear in the RKCSA for the effective period in 1996 because requirements for increased observer coverage cannot be implemented under this inseason adjustment to assure that the crab performance standard will be met. Unlike the emergency rule (60 FR 4866, January 25, 1995), the pelagic trawl gear component is unable to fish in the closed area. However, under the proposed Amendment 37 the pelagic trawl gear component would be exempt from a closure of the RKSCA.

Further justification for the inseason adjustment under § 675.20(e)(1)(iv) follows.

Red King Crab Conservation Issues

The number of red king crab in the Bristol Bay area of the Bering Sea is declining. Results of the 1994 and 1995 NMFS crab surveys estimated the number of female red king crab to be below the threshold number established in the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands Area (Crab FMP). The 1994 and 1995 fishery for red king crab was closed in Bristol Bay because of the low abundance of mature female red king crab. No fishery is anticipated for 1996. Due to the closure of the Bristol Bay red king crab fishery, the area east of 163° W. long. was also closed to *C. bairdi* Tanner crab fishing for the 1994–95 season to reduce red king crab bycatch. A similar situation is likely to occur in 1996. Current regulations at § 675.22(a) close Federal statistical area 512 to trawling to protect the red king crab stock. This closure area was designed to protect approximately 90 percent of the mature female red king crab. This measure was based on the distribution of female crab in the mid 1980's. The current distribution of mature female crab shows considerable concentrations between 162° and 164° W. long. and between 56° and 57° N. lat., the area of the RKCSA. As a result, closure of the area encompassed by these coordinates would prevent excessive bycatch of female crab.

Based on NMFS' survey data, the 1994 and 1995 abundance index for legal-sized male Bristol Bay red king crab was 5.5 million and 5.3 million crab, respectively, compared to 7.3 million in 1993. The abundance index for mature female crab declined from 14.2 million crab in 1993 to 7.5 million crab in 1994 and 8.4 million crab in 1995. These numbers are below or equal to the threshold value of 8.4 million crab established pursuant to the crab FMP. These declines were corroborated by the length-based assessment model that was newly developed by the Alaska Department of Fish and Game. The Bristol Bay red king crab stock continues to suffer from a long period of low recruitment and sublegal crab populations are among the lowest on record.

Crab and Halibut Bycatch in the Groundfish Trawl Fisheries

The highest bycatch of red king crab has been from the rock sole/other flatfish fishery category, especially in 1993 and 1994 when the red king crab bycatch in Zone 1 was estimated at 134,000 and 193,000 crab, respectively. During this same period, the bottom trawl pollock fishery caught the next highest amount of Zone 1 red king crab (44,000 and 39,000, respectively). The yellowfin sole and Pacific cod fisheries also took some red king crab. Red king crab bycatch in trawl fisheries tends to be highest during the first few months of the year. The location of the red king crab during this period is coincident with the spawning rock sole. Significantly reduced bycatch rates of red king crab occur in other trawl fisheries throughout the year.

Data from 1990–94 show that between 20 and 45 percent of the groundfish catch in the rock sole fishery has come from within the RKCSA. Between 40 and 70 percent of the red king crab incidental catch in the rock sole fishery is taken within this area.

The RKCSA also accounts for between 10 and 45 percent of the halibut incidental catch in the rock sole fishery. Although closure of the RKCSA to protect red king crab stocks would also reduce halibut bycatch within this area, relocated fishing effort could result in similar or higher halibut bycatch rates in other areas. Fishing effort relocated from the closure area could also result in greater bycatch of *C. bairdi* Tanner crab. This may cause the rock sole roe fishery to attain specified halibut and *C. bairdi* bycatch allowances more quickly, which would close the fishery sooner.

The closure of the RKCSA in 1995 was correlated with a dramatic reduction in red king crab bycatch. In 1992 the rock sole fishery caught approximately 59,000 red king crab, in 1993 166,154 red king crab, in 1994 the fishery took 216,821 red king crab. The rock sole fishery significantly exceeded its red king crab bycatch allowance in both 1993 and 1994. In 1995 through the month of March, the rock sole fishery took only 19,000 red king crab; an additional 1,500 crab were taken later in the year.

Economic Impacts of the Closure

The RKCSA closure could have economic consequences for the rock

sole fishery. Whereas the majority of the red king crab historically taken in the rock sole fishery were within the RKCSA, this area has also provided a significant percentage of groundfish catch. The potential impacts of the closure are made more significant because of the recent closure of the Pribilof Islands area to vessels using trawl gear (§ 675.24(h)). The Pribilof Islands area has historically been important to the rock sole fishery.

Appendix 2 to the EA/RIR/IRFA for Amendment 37 (see **ADDRESSES**) contains an economic comparison of the 1993, 1994, and 1995 rock sole fisheries. This analysis compares the 1993, 1994, and 1995 rock sole fishery using several different scenarios (i.e., with and without the Pribilof Island closure, different price sets, etc.). As an example, the 1994 and 1995 fishery data for the rock sole fishery, accounting for the closure of the Pribilof Island area in 1995, and using inseason 1994 prices, indicate that gross and net product value decreased by 35 percent, bycatch costs decreased by 51 percent, and net benefit decreased by 30 percent. The factors that would determine the effects of closing the RKCSA in the future will change. In the future, the adjustment to such a closure would tend to be less difficult than in 1995 because the fleet has the experience of having adjusted to the emergency rule closure in 1995.

The Council recommended closure of the RKCSA from January 20 through March 31. The greatest number of female red king crab is most likely to be taken as bycatch during this time. Inseason closures of an area are authorized for a period of 60 days, which would be less than the Council's intended closure period. Regulations at § 675.20(e)(6) authorize closures beyond 60 days if warranted by available data. The available scientific information indicates that the relative distribution and abundance of female red king crab in the closure area is high. Large numbers of red king crab have been taken from this area by trawling operations during the early part of the year when the concentration of female king crab is high. To ensure that bycatch of female red king crab is minimized in the early season trawl fisheries, NMFS is extending the closure for an additional 11 days beyond the usual 60-day effective period, through March 31, 1996. The Regional Director, Alaska Region, has determined that this interim closure is based on the best available scientific information concerning the seasonal distribution and abundance of red king crab and the bycatch rates of red king crab associated with groundfish trawl fisheries.

Classification

This action is taken under § 672.20(e) and is exempt from review under E.O. 12866.

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

Dated: December 4, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30011 Filed 12–08–95; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 237
Monday, December 11, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 317 and 412

RIN 3206–AF96

Executive and Management Development

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend part 317 of its regulations governing initial career appointment to the Senior Executive Service (SES) and Qualifications Review Board certification. The proposed changes to part 317 would eliminate the 3-year limitation on the validity of Qualifications Review Board (QRB) certification for appointment to the Senior Executive Service and simplify the Executive Resources Board (ERB) certification of candidates. The Office is also proposing to amend part 412 of its regulations governing executive and management development. The coverage will be expanded to include supervisory development. The revised regulations present broad program criteria on the systematic development of executives, managers, supervisors, and candidates. They also establish minimum requirements for formal Senior Executive Service candidate development programs. The changes proposed promote training and development activities which foster a corporate perspective of Government.

DATES: Written comments will be considered if received no later than February 9, 1996.

ADDRESSES: Send or deliver written comments to the Ms. K. Joyce Edwards, Assistant Director, Office of Executive Resources, Office of Personnel Management, Room 6484, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Constance Maravell, 202–606–1832.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) issued proposed regulations on executive and management development on March 2, 1993 (58 FR 11988). We received comments from 23 agencies, 9 individuals and the Federal Executive Institute Alumni Association. Most comments expressed support for including the development of supervisors along with that of managers and executives. The proposed regulations were withdrawn on February 11, 1994 (59 FR 6593) to see which objectives of the regulations could be achieved through alternative means and so they could be reviewed in the context of the sunsetting of the Federal Personnel Manual in December 1993.

General

In keeping with the spirit of Executive Order 12861 on ''Elimination on One-Half of Executive Branch Internal Regulations,'' we re-examined the proposed regulations. This has resulted in the elimination of regulations on needs assessments for the management profession and for individuals and formal candidate development programs for supervisors and managers. Proposed requirements in these areas have been removed, not because we have found such activities to be ineffective, but because agencies should be free to engage in them without being required to do so. Well selected developmental experiences enhance the competence and broaden the perspective of the managerial workforce. We encourage agencies to undertake these activities on a systematic basis.

We are also deleting regulations that are covered by statute which require no further clarification such as OPM's responsibility for the review of agency programs. We would like to draw agency attention to two provisions of statute which will not be regulated further. The first is the use of sabbaticals in general, 5 U.S.C. 3396(c). The second is, 5 U.S.C. 3396(d), authorizing sabbaticals, training, or details or other temporary assignments in other agencies, State or local governments, or the private sector for the continuing training and development of incumbent career SES members

The earlier proposed regulations also provided for the reactivation of expired QRB certifications for graduates of formal SES candidate development programs (CDP). Reactivation was accomplished by a variation to the regulations in December 1993, which extended certifications until December 31, 1996. The current proposed regulations in part 317 would remove the present 3-year time limit on all QRB certifications. The removal would apply to certifications issued before the regulations as well as those issued afterwards.

In response to a recommendation from the Executive Resources Management Group work group on staffing, we propose to simplify procedural requirements for the ERB certification of SES candidates. Specifically, when there are less than 10 eligible candidates for an SES position, an ERB would be permitted to refer all candidates to the appointing authority without further ranking. The statutory requirement that ERB's make written recommendations must be observed regardless of the number of candidates.

What remains in the regulations is a clear set of criteria which promote a corporate perspective of governance through the systematic development of candidates for the SES and the continuing development of supervisors, managers, and executives. Public managers with a corporate perspective respect and embrace the dynamics of American democracy; they recognize their fundamental responsibility for balancing change and continuity. Their values encompass a respect for both diversity and merit. Their commitment to Government service transcends their agency mission and individual profession. Executives with a corporate perspective will play a critical role in the reinvention of Government.

These regulations recognize and give meaning to the findings of OPM's 1992 Leadership Effectiveness Study. The 10,000 managers who responded identified 22 generic competencies essential to successful performance as leaders in any government position. The study found that effective supervisors, managers and executives have a shared base of competencies. As individuals move from supervisors to managers and executives they must acquire additional enhanced competencies. For this reason, the preparation of supervisors and managers is considered integral to the development of candidates for the SES.

The criteria in section 412.103 are designed to enable agencies to run strong supervisory, managerial and executive development programs to provide a corporate perspective in the context of their succession planning systems. This assures that there are enough prepared and qualified employees as candidates for SES positions. This section requires agencies to provide initial and continuing training and development to their management corps. Formal SES candidate development programs are one option, but not the only one for assuring that agencies have enough candidates for the SES.

SES Candidate Development Programs (CDP)

If an agency desires graduates of its SES candidate development program to receive Qualifications Review Board certification, the program must meet the minimum standards in § 412.104. OPM will review all programs prior to announcement for the first time under these regulations regardless of whether they have been approved under the previous regulations. After the initial announcement, OPM will only review programs if there is a significant change in the program.

The standards meet statutory requirements and support the National Performance Review recommendation for promoting a corporate culture in the SES. During the time the candidates are in the program, they must attend at least 80 hours of formal interagency training programs; have developmental assignments totalling 4 months; and have a mentor. If an agency wishes to deviate from these minimum requirements, it must obtain an exception from OPM before the candidate starts the program.

OPM believes that even individuals who are well qualified for an SES appointment can benefit from this minimum training and development. It is not our intention to grant exceptions to the minimum requirements based on the fact that the candidate is already well qualified to enter the SES. OPM does not support the use of the formal SES candidate development program as a mechanism for ''precertifying'' fully qualified individuals for the SES.

These standards differ from the existing regulations in the following ways. Agencies can choose, under the standards, the formal interagency executive level training experience rather than be limited to OPM approved programs. An agency may substitute a work experience, longer than 80 hours, that involves multiple agencies for formal training; but this substitution does not eliminate the requirement for a developmental assignment. The length of the developmental work assignments has been specified to eliminate confusion about what cases will be presented to the QRB.

One way to promote a corporate perspective in the SES is to encourage the selection of qualified applicants from outside the agency. The law, in 5 U.S.C. 3393(a), supports this goal by requiring at least governmentwide competition for initial appointment to the SES. While the proposed regulations on recruitment for SES CDP are consistent with this statutory requirement, they provide flexibility for those agencies which have demonstrated support for an SES corporate perspective.

Specifically, the exception from Governmentwide competition in the current regulations for agencies with 150 or fewer allocated SES positions for their candidate development programs has been changed in two ways. First, the exception is available to agencies which can show OPM that in the 5 years prior to announcing a CDP, at least 15% of the career SES members appointed come from outside the agency. An agency may be able to conduct one offering of a CDP under this exception but not another because the agency does not meet the criterion at that time. Second, when there has only been agencywide competition for the CDP, the graduates of these programs are required to compete Governmentwide for entry to the SES.

The regulations on ''status'' and ''non-status'' SES candidate development programs currently in subpart E have been rewritten in a new subpart B to eliminate redundancy. There is no change in the nature of the programs.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they affect only Federal employees and agencies.

List of Subjects in 5 CFR Parts 317 and 412

Government employees.

Office of Personnel Management.

James B. King,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR parts 317 and 412 as follows:

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595.

2. In section 317.501, paragraph (c)(5) is revised to read as follows:

§ 317.501 Recruitment and selection for initial SES career appointment.

* * * * *

(c) * * *

(5) Provide that the ERB make written recommendations to the appointing authority on the eligible candidates and identify the best qualified candidates. If there are less than 10 eligible candidates, the ERB may refer to the appointing authority all candidates as ''best qualified.'' Rating sheets may be used to satisfy the written recommendations requirement for individual candidates, but the ERB must certify in writing the list of candidates to the appointing authority.

* * * * *

3. In section 317.502, paragraph (c) is revised to read as follows:

§ 317.502 Qualifications Review Board certification.

* * * * *

(c) Qualifications Review Board certification of executive qualifications must be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. Any existing time limit on a previously approved certification is removed.

* * * * *

PART 412—EXECUTIVE, MANAGEMENT, AND SUPERVISORY DEVELOPMENT

3. Part 412 is revised to read as follows:

PART 412—EXECUTIVE, MANAGEMENT, AND SUPERVISORY DEVELOPMENT

Subpart A—General Provisions

Sec.
412.101 Coverage.
412.102 Purpose.
412.103 Criteria for programs for the systematic training and development of executives, managers, supervisors, and candidates.
412.104 Formal candidate development programs for Senior Executive Service positions.

Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs

412.201 Purpose.
412.202 ''Status'' programs.
412.203 ''Non-status'' programs.

Authority: 5 U.S.C. 3397, 4101, *et seq.*

Subpart A—General Provisions

§ 412.101 Coverage.

This subpart applies to all incumbents of or candidates for supervisory, managerial, and executive positions in the General Schedule, the Senior Executive Service (SES), or equivalent pay systems who are also covered by part 410 of this chapter.

§ 412.102 Purpose.

(a) This subpart implements for supervisors, managers, and executives the provisions of chapter 41 of title 5 of the United States Code related to training and section 3396 of title 5 related to the criteria for programs of systematic development of candidates for the SES and the continuing development of SES members.

(b) The subpart identifies a continuum of preparation starting with supervisory positions and proceeding through management and executive positions governmentwide. For this reason, the subpart establishes a comprehensive system that is intended to:

(1) Provide the competencies needed by supervisors, managers, and executives to perform their current functions at the mastery level of proficiency; and

(2) Provide learning through development and training in the context of succession planning and corporate perspective to prepare individuals for advancement, thus supplying the agency and the government with an adequate number of well prepared and qualified candidates to fill supervisory, managerial, and executive positions governmentwide.

§ 412.103 Criteria for programs for the systematic training and development of executives, managers, supervisors, and candidates.

Each agency must provide for the initial and continuing development of individuals in executive, managerial, and supervisory positions, and candidates for those positions. The agency must issue a written policy to assure that their development programs:

(a) Are designed as part of the agency's strategic plan and foster a corporate perspective.

(b) Make assignments to training and development consistent with the merit system principles set forth in 5 U.S.C. 2301(b) (1) and (2).

(c) Provide for:

(1) Initial training as an individual makes critical career transitions to become a new supervisor, a new manager, or a new executive consistent with the results of needs assessments;

(2) Continuing learning experiences, both short- and long-term, throughout an individual's career in order for the individual to achieve the mastery level of proficiency for his or her current management level and position; and

(3) Systematic development of candidates for advancement to a higher management level. Formal candidate development programs leading to noncompetitive placement eligibility represent one, but not the only, type of systematic development.

§ 412.104 Formal candidate development programs for Senior Executive Service positions.

Formal SES candidate development programs permit the certification of the executive qualifications of graduates by a Qualifications Review Board under the criterion of 5 U.S.C. 3393(c)(2)(B) and selection for the SES without further competition. The agency must have a written policy describing how the program will operate. The agency must obtain OPM approval of the program before it is conducted for the first time under these regulations and whenever there are substantive changes to the program. Agency programs must meet the following criteria.

(a) *Recruitment.* (1) Recruitment for the program is from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service.

(2) Agencies may request an exception to the provision in paragraph (a)(1) of this section if they can show that during the 5-year period prior to the announcement of a program they have made at least 15% of their career SES appointments from sources outside the agency. Notwithstanding this exception recruitment must be competitive and be announced at least agencywide. Graduates of these programs who have been certified by a QRB must then compete Governmentwide for entry to the SES, but do not have to obtain a second QRB certification before appointment.

(b) In recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301(b) (1) and (2), takes into consideration the goal of achieving a diversified workforce.

(c) All candidates are selected through SES merit staffing procedures. The number selected shall be consistent with the number of expected vacancies.

(d) Each candidate has an SES development plan covering the period of the program. The plan is prepared from a competency-based needs determination. It is approved by the Executive Resources Board.

(e) The minimum program requirements, unless an exception is obtained in advance of the beginning of the candidate's program, for an SES development plan are as follows:

(1) There is a formal training experience that addresses the executive core qualifications and their application to SES positions governmentwide. The training experience must include interaction with a wide mix of Federal employees outside the candidate's department or agency to foster a corporate perspective but may include managers from the private sector and state and local governments. The nature and scope of the training must have Governmentwide or multi-agency applicability. If formal interagency training is used to meet this requirement, it must total at least 80 hours. If an interagency work experience is used, it must be of significantly longer duration than 80 hours.

(2) There are developmental assignments that total at least 4 months of full-time service outside the candidate's position of record. The purpose of the assignments is to broaden the candidate's experience and/or increase knowledge of the overall functioning of the agency so that the candidate is prepared for a range of agency positions.

(3) There is a member of the Senior Executive Service as a mentor.

(f) Each candidate's performance in the program is evaluated periodically, and there is a written policy for discontinuing a candidate's participation in the program. A candidate can be discontinued or may withdraw from the program without prejudice to his or her ability to apply directly for SES positions.

(g) Each candidate has a documented starting and finishing date in the program.

Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs

§ 412.201 Purpose.

Section 3393 of title 5, United States Code, requires that career appointees to the SES be recruited either from all groups of qualified individuals within the civil service, or from all groups of qualified individuals whether or not within the civil service. This subpart sets forth regulations establishing two types of SES candidate development programs, ''status'' and ''nonstatus.''

§ 412.202 ''Status'' programs.

Only employees serving under career appointments, or under career-type appointments as defined in 5 CFR 317.304(a)(2), may participate in ''status'' candidate development programs.

§ 412.203 ''Nonstatus'' programs.

(a) Eligibility. Candidates are from outside Government and/or from among employees serving on other than career or career-type appointments within the civil service.

(b) *Requirements.* (1) Candidates must be appointed utilizing the Schedule B authority authorized by 5 CFR 213.3202(j). The appointment may not exceed or be extended beyond 3 years.

(2) Assignments must be to a full-time position created for developmental purposes connected with the SES candidate development program. Candidates serving under Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

(3) Schedule B appointments must be made in the same manner as merit staffing requirements prescribed for the SES, except that each agency shall follow the principle of veteran preference as far as administratively feasible. Positions filled through this authority are excluded under 5 CFR 302.101(c)(6) from the appointment procedures of part 302.

[FR Doc. 95–30053 Filed 12–8–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB24

Common Crop Insurance Regulations; Malting Barley Price and Quality Endorsement Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby proposes to revise the Malting Barley Option Crop Insurance provisions. The intended effect of this action is to improve the insurance coverage now available for producers who grow malting barley under contract with a brewery, or business that sells malt or processed mash to a brewery; and to provide a new option that will allow producers without contracts (open market producers) to obtain insurance for their malting barley.

DATES: Written comments, data, and opinions on this proposed rule must be submitted by the close of business December 21, 1995 to be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through February 5, 1996.

ADDRESSES: Written comments, data, and opinion on this proposed rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery should be made to 14th and Independence Avenue, S.W., Room 6097, South Building, Washington, D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 14th and Independence Avenue, S.W., Room 6097, South Building, Washington, D.C., during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Regulatory Economic Analysis of the Malting Barley Endorsement Crop Insurance provisions, contact Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Telephone (202) 720–0713.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 2000.

This rule has been determined to be ''significant'' for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (''OMB'').

A Regulatory Economic Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected benefits of this action outweigh the costs. The new Malting Barley Price and Quality Endorsement will simplify program operations, benefit FCIC and reinsured companies, and enhance the insurance coverage for malting barley producers.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were submitted to OMB for their approval under section 3507(j) of the Paperwork Reduction Act of 1995, and received emergency approval through March 5, 1996. The agency is also seeking a valid approval for 3 years under section 3507(d). These requirements were previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. Public comments are due by February 5, 1996.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including General Crop Insurance Regulations, Common Crop Insurance Regulations; Malting Barley Price and Quality Endorsement Crop Insurance Provisions.'' The Information to be collected includes: a crop insurance acreage report, an insurance application and continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Some respondents may provide additional information for the purpose of selecting malting barley insurance coverage options. Potential respondents to this information collection are growers of malting barley that are eligible for Federal crop insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine and collect premiums or other monetary amounts (or fees), and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues through February 5, 1996, on the following: (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.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Bonnie Hart, Information Management Branch, Farm Service Agency, U.S. Department of Agriculture, Washington, D.C. 20250. Copies of the information collection may be obtained from Bonnie Hart at the above address. Telephone (202) 690–2857.

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

This regulation will not have a significant impact on a substantial number of small entities. The impact of obtaining or delivering these policies will not vary significantly from that required to obtain or deliver the present policy. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

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

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

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions promulgated by the National Appeals Division under Pub. L. No. 103–354 must be exhausted before judicial action may be brought.

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

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising and reissuing 7 CFR 457.103, Malting Barley Option effective for the 1996 and succeeding crop years. The principal changes to the provisions for insuring malting barley are as follows:

1. The current Malting Barley Option will be replaced by the proposed Malting Barley Price and Quality Endorsement. The new endorsement is divided into two coverage options. Option A is intended to provide insurance coverage for producers who do not grow malting barley under contract with a brewery or with a business that makes or sells malt or processed mash to a brewery. Option B provides insurance coverage for producers who grow malting barley under such a contract. A producer may select only one option to cover all acreage planted to approved varieties of malting barley in the county during the crop year.

Option A

2. Section 1—Requires an applicant for insurance or insured to provide records of the sale of malting barley for at least four crop years to be eligible for coverage. These production records may be used to determine the malting barley production guarantee (see item 3 below).

3. Section 2—Provides that the malting barley production guarantee per acre will be the lesser of: (a) The production guarantee calculated under the APH regulations, 7 CFR part 400, subpart G, and the Small Grains Crop Provisions for feed barley for acreage planted to approved malting varieties; or (b) the average amount calculated under the APH regulations of malting barley sold per planted acre during the APH base period.

4. Section 3—Provides for the maximum malting barley additional value price to be designated in the Special Provisions.

5. Section 4—Indicates the production to count against the malting barley production guarantee. Quality standards specified in this section represent typical minimum acceptance standards in the malting barley industry.

6. Section 5—Provides that a claim cannot be settled until final disposition of all production can be determined, or May 31 of the calendar year following the crop year. Production stored after May 31 of the calendar year following the crop year will be adjusted based on the quality specifications contained in subsection 4(b) of the option. This extended settlement period is intended to prevent the payment of an indemnity for production that does not meet quality specifications but is ultimately used for malting purposes due to a shortage of quality malting barley. If barley is used for malting purposes regardless of quality it is production to count against the guarantee.

Option B

7. Section 1—Requires an applicant for insurance or insured to provide a copy of the malting barley contract by the acreage reporting date to be eligible for coverage. The amount of production under contract may be used to determine the malting barley production guarantee (see item 8 below).

8. Section 2—Provides that the malting barley production guarantee per acre be the lesser of: (a) The production guarantee calculated under the APH regulations, 7 CFR part 400, subpart G, and the Small Grains Crop Provisions for feed barley for acreage planted to approved malting varieties; or (b) the amount determined by dividing the number of bushels of contracted production by the number of acres planted to approved malting varieties, and multiplying the result by the percentage for the coverage level you elected under the Small Grains Crop Provisions for feed barley.

9. Section 3—Establishes the maximum malting barley additional value price as: (a) The difference between the maximum price election available for feed barley under the Small Grains Crop Provisions and the established sale price in the malting barley contract provided such price is fixed on or before the acreage reporting date; or (b) the basis or differential per bushel shown in the malting barley contract if the sale price is based on a future market price for basic (feed) barley plus a differential amount for malting barley production. For example, if the malting barley contract provides for a fixed price of $2.50 per bushel on or before the acreage reporting date and the maximum price election available for feed barley is $1.90 per bushel, the additional value price would be $0.60 per bushel ($2.50–$1.90); however, if the malting barley contract provides for a basis or differential of $0.60 per bushel above a future market price, the additional value price would be $0.60. In no event will the additional value price exceed 200% of the maximum additional value price shown in the Special Provisions.

10. Section 4—Indicates the production to count against the malting barley production guarantee in the event of a claim. Production meeting the

minimum acceptance standards specified in the malting barley contract for percentage of protein, plump kernels, thin kernels, germination, blight damage, mold injury or damage, sprout damage, frost injury or damage, and parts per million of substances or conditions, including mycotoxins, that are identified by the Food and Drug Administration as being injurious to human or animal health, or the standards specified in this section, will be considered production to count.

11. Section 5—Specifies that a claim cannot be settled until final disposition of all production can be determined, or May 31 of the calendar year following the crop year. Production stored after this date will be adjusted based on the quality specifications indicated in subsection 4(b) of the option. This extended settlement period is intended to prevent the payment of an indemnity for production that does not meet quality specifications but that is ultimately used for malting purposes due to a shortage of quality malting barley. If barley is used for malting purposes regardless of quality it is production to count against the guarantee.

List of Subjects in 7 CFR Part 457

Crop insurance, Malting Barley Price and Quality Endorsement Crop Provisions

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. § 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1996 and succeeding crop years, as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1).

2. Section 457.103 is revised to read as follows:

§ 457.103 Malting Barley Crop Insurance.

The malting barley crop insurance provisions for the 1996 and succeeding crop years are as follows:

United States Department of Agriculture; Federal Crop Insurance Corporation; Small Grains Crop Insurance; Malting Barley Price and Quality Endorsement

(This is a continuous endorsement. Refer to section 2 of the Common Crop Insurance Policy.)

In return for your payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Common Crop Insurance Policy (§ 457.8) and Small Grains Crop Provisions (§ 457.101), subject to the terms and conditions described herein.

1. You must have the Common Crop Insurance Policy (§ 457.8) and the Small Grains Crop Insurance Provisions (§ 457.101) in force to elect to insure malting barley under this endorsement.

2. You must select either option A or option B before the sales closing date. Failure to select either option A or option B, or failure to qualify for coverage under the terms of the option selected, will result in no coverage under this endorsement for the applicable crop year. For example, if you elect option B but fail to have a binding malting barley contract by the acreage reporting date, no coverage will be provided under this endorsement for the crop year. The selection will continue from year to year unless you cancel or change your selection prior to the sales closing date.

3. You must select an added value price election at the time of application.

4. The additional premium amount for this coverage will be determined by multiplying your malting barley production guarantee per acre times your selected additional value price election, times the premium rate, times the insured acreage, times your share at the time coverage begins.

5. In addition to the acreage reporting requirements contained in section 6 of the Common Crop Insurance Policy (§ 457.8), you must provide the information required by your selected option.

6. All barley acreage that is planted to approved malting varieties, and that is insurable under the feed barley crop provisions and the selected option must be insured under this endorsement and, on the acreage report, will be designated as, and limited to, one unit.

7. In lieu of provisions in the Common Crop Insurance Policy (§ 457.8) that require you to submit a claim for indemnity not later than 60 days after the end of the insurance period, you must submit a claim for indemnity declaring the amount of your loss not later than May 31 of the calendar year immediately following the crop year.

8. Prevented planting coverage is not provided by this endorsement but is available only under the terms of the Small Grains Crop Provisions for barley.

9. Definitions:

(a) APH—Actual Production History as determined in accordance with 7 CFR part 400, subpart G.

(b) Approved malting variety—A variety of barley specified as such in the Special Provisions.

(c) Brewery—A facility where malt beverages are commercially produced for human consumption.

(d) Contracted production—The quantity of malting barley the insured producer agrees to grow and deliver, and the buyer agrees to accept, under the terms of the malting barley contract.

(e) Licensed grain grader—A person who is authorized to inspect and grade barley under the United States Grain Standards Act or the United States Warehouse Act.

(f) Malting barley contract—A written contract with a brewery or business that produces or sells malt or processed mash to a brewery or a company owned by such brewery or business, in which is stated the production contracted and a purchase price or a method to be used in determining such price.

(g) Objective test—A determination made by a qualified person using standardized equipment that is widely used in the malting industry, and following a procedure approved by the American Society of Brewing Chemists when determining percent germination or protein content; grading performed following a procedure approved by the Federal Grain Inspection Service when determining quality factors other than percent germination or protein content; or by the Food and Drug Administration when determining parts per million of mycotoxins or other substances or conditions that are identified as being injurious to human or animal health.

(h) Subjective test—A determination made using olfactory, visual, touch or feel, masticatory, or other senses unless performed by a licensed grain grader; or that uses non-standardized equipment, or that does not follow a procedure approved by the American Society of Brewing Chemists, the Federal Grain Inspection Service, or the Food and Drug Administration.

(i) Value per bushel—The highest price per bushel received or that could be received for the malting barley in the local market area.

(j) Unit—All insurable acreage of approved malting varieties in the county on the date coverage begins for the crop year.

Option A (for Non-Contracted Production or a Combination of Contracted and Non-Contracted Production)

This option provides coverage for malting barley production losses at a price per bushel greater than that available under the Small Grains Crop Provisions.

1. To be eligible for coverage under this option you must provide us acceptable records of the sale of malting barley and the number of acres planted to malting varieties for at least the four crop years prior to the crop year immediately preceding the current crop year. For example, to determine your production guarantee for the 1995 crop year, records must be provided for the 1990 through the 1993 crop years, if malting barley was planted in each of those crop years. You must provide these records to us no later than the production reporting date.

2. Your malting barley production guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) A production guarantee calculated in accordance with APH procedures using the malting barley sales and acreage records provided by you.

3. The additional value price per bushel elected cannot exceed the maximum price designated in the Special Provisions.

4. The amount of production to count against your malting barley production guarantee will include all:

(a) Appraised production determined in accordance with subsections 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(b) Harvested production and potential unharvested production that meets, or would if properly handled, meet:

(1) Tolerances established by the Food and Drug Administration or other public health organization of the United States for substances or conditions, including mycotoxins, that are identified as being injurious to human or animal health; and

(2) The following quality standards, as applicable:

	Six-rowed malting barley	Two-rowed malting barley
Protein (dry basis)	14.0% maximum	14.0% maximum.
Plump kernels	65.0% minimum	75.0% minimum.
Thin kernels	10.0% maximum	10.0% maximum.
Germination	95.0% minimum	95.0% minimum.
Blight damaged	4.0% maximum	4.0% maximum.
Injured by mold	5.0% maximum	5.0% maximum.
Mold damaged	0.4% maximum	0.4% maximum.
Sprout damaged	1.0% maximum	1.0% maximum.
Injured by frost	5.0% maximum	5.0% maximum.
Frost damaged	0.4% maximum	0.4% maximum.

(c) Harvested production that does not meet the quality standards contained in subsection 4(b) of this option, but is accepted by a buyer for malting purposes.

(d) No reduction in value will be allowed for moisture content; damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in subsection (b) of this section; or any other costs associated with normal handling and marketing of malting barley. All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the Grain Standards Act to verify the result of any test. In the event of a conflict in the test results, our results will be used to determine the amount of production to count. If failure to meet the quality standards is due to insurable causes, the quantity of such production may be reduced for quality deficiencies by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing this sum into the value per bushel of the damaged production; and

(3) Multiplying the resulting factor (not to exceed 1.0) by the number of bushels of damaged production.

5. No claim under this option may be settled until the earlier of:

(a) The date final disposition of production from all acreage planted to approved malting barley varieties is completed; or

(b) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested. Production to count for malting barley that has not been sold by this May 31 date will include all production that meets the quality specifications contained in subsection 4(b) of this option.

The limitations specified in subsections 5(a) and (b) will not apply when all production from the insured malting barley unit grades U.S. No. 4 or lower in accordance with the grades and grade requirements for the subclasses Six-rowed barley, Two-rowed barley, and the class Barley in accordance with the Official United States Standards for Grain.

6. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage by the malting barley production guarantee per acre;

(b) Multiplying the result by your elected additional value price per bushel;

(c) Multiplying the number of bushels of production to count by your elected additional value price per bushel; and

(d) Subtracting the result of step (c) from the result of step (b).

7. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume that each unit contains 40 acres. Further assume that your production guarantee under the Small Grains Crop Provisions is 30 bushels per acre or a total of 2,400 bushels. Your malting barley unit production guarantee is limited to 2,100 bushels by subsection 2(b). A loss causes the total production to count for all units under the Small Grains Crop Provisions to drop to 1,000 bushels, none of which meet the quality standards covered by this option. The indemnity for the malting barley unit would be based on a combined production and quality loss of 2,100 bushels. The indemnity would be paid at the additional value price per bushel. If the price were $0.40 per bushel, the indemnity for the malting barley unit would be $840.00 (2,100 × $0.40). The basic loss is paid under the Small Grains Crop Provisions for feed barley.

Option B—(for Contracted Production)

This option provides coverage for malting barley production losses at a price per bushel greater than that available under the Small Grains Crop Provisions.

1. To be eligible for coverage under this option you must provide us a copy of your malting barley contract by the acreage reporting date. Only production or acreage under contract is covered by this option (B). The contract must be in place and effective before the acreage reporting date.

2. Your malting barley production guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) The number of bushels obtained by:

(1) Dividing the number of bushels of contracted production by the number of acres planted to approved malting varieties in the current crop year; and

(2) Multiplying the result by the percentage for the coverage level you elected for barley covered under the Small Grains Crop Provisions.

3. The additional value price per bushel will not exceed 200% of the maximum additional value price shown on the Special Provisions and will be further limited to:

(a) The difference between the maximum price election available for feed barley under the Small Grains Crop Provisions and the established sale price contained in the malting barley contract for production that meets the quality standards required by such contract (without regard to discounts or incentives) if the sale price is a fixed dollar amount established on or before the acreage reporting date; or

(b) The premium amount per bushel contained in the malting barley contract for production that meets the quality specifications required by such contract (without regard to discounts or incentives) if the sale price is based on a future market price for feed barley plus a premium amount for malting barley production.

4. The amount of production to count against your malting barley production guarantee will include all:

(a) Appraised production determined in accordance with subsection 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(b) Either harvested production and potential unharvested production that meets, or would if properly handled meet, the minimum acceptance standards contained in the malting barley contract for protein, plump kernels, thin kernels, germination, blight damage, mold injury or damage, sprout damage, frost injury or damage, and mycotoxins or other substances or conditions identified by the Food and Drug Administration or other public health organization of the United States as being injurious to human or animal health, or the following quality standards as applicable:

	Six-rowed malting barley	Two-rowed malting barley
Protein (dry basis)	14.0% maximum	14.0% maximum.
Plump kernels	65.0% minimum	75.0% minimum.
Thin kernels	10.0% maximum	10.0% maximum.
Germination	95.0% minimum	95.0% minimum.
Blight damaged	4.0% maximum	4.0% maximum.
Injured by mold	5.0% maximum	5.0% maximum.
Mold damaged	0.4% maximum	0.4% maximum.
Sprout damaged	1.0% maximum	1.0% maximum.
Injured by frost	5.0% maximum	5.0% maximum.
Frost damaged	0.4% maximum	0.4% maximum.

(c) Harvested production that does not meet the minimum acceptance standards for the factors listed in subsection 4(b) of this option, but that is accepted by a buyer for malting purposes.

(d) No reduction in value will be allowed for moisture content; damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in subsection (b) of this section; or any other costs associated with normal handling and marketing of malting barley. All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the Grain Standards Act to verify the result of any test. In the event of a conflict in the test results, our results will be used to determine the amount of production to count. If failure to meet the quality standards is due to insurable causes, the quantity of such production may be reduced for quality deficiencies by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing this sum into the value per bushel of the damaged production; and

(3) Multiplying the resulting factor (not to exceed 1.0) by the number of bushels of damaged production.

5. No claim under this option may be settled until the earlier of :

(a) The date final disposition of production from all acreage planted to approved malting barley varieties is completed; or

(b) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested. Production to count for malting barley that has not been sold by this May 31 date will include all production established in accordance with subsection 4(b) of this option.

The limitations specified in subsections 5 (a) and (b) will not apply when all production from the insured malting barley unit grades U.S. No. 4 or worse in accordance with the grades and grade requirements for the subclasses Six-rowed barley, Two-rowed barley, and the class Barley in accordance with the Official United States Standards for Grain.

6. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage by the malting barley production guarantee per acre;

(b) Multiplying the result by your elected additional value price per bushel;

(c) Multiplying the number of bushels of production to count by your elected additional value price per bushel; and

(d) Subtracting the result of step (c) from the result of step (b).

7. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume that unit contains 40 acres. Further assume that your production guarantee under the Small Grains Crop Provisions is 30 bushels per acre or a total of 2,400 bushels. Your malting barley unit production guarantee is limited to 2,100 bushels by subsection 2(b). A loss causes the total production to count under the basic barley policy to drop to 1,000 bushels, none of which meet the minimum acceptance standards covered under this option. The indemnity for the malting barley unit would be based on a combined production and quality loss of 2,100 bushels. The indemnity would be paid at the additional value price per bushel. If the price were $0.60 per bushel, the indemnity for the malting barley unit would be $1,260.00 (2,100 × $0.60). The basic loss is paid under the Small Grains Crop Provisions for feed barley.

Done in Washington, D.C., on December 5, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–30085 Filed 12–6–95; 4:03 pm]

BILLING CODE 3410–FA–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 31

[Docket No. 95–29]

RIN 1557–AB40

Extensions of Credit to Insiders and Transactions With Affiliates

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to revise its rules governing extensions of credit to national bank insiders and to relocate to part 31 several interpretive rulings dealing with transactions with affiliates. This proposal is another component of the OCC's Regulation Review Program to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens. The proposal modernizes and clarifies the insider lending rules and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

DATES: Comments must be received by February 9, 1996.

ADDRESSES: Comments should be directed to: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 95–29. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274 or by electronic mail to reg.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Aline Henderson, Senior Attorney, Bank Activities and Structure (202) 874–5300; Emily McNaughton, National Bank Examiner, Credit & Management Policy (202) 874–5170; or Mark Tenhundfeld, Senior Attorney, Legislative and Regulatory Activities (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

Summary of Regulation Review Program

The OCC proposes to revise 12 CFR part 31 as another component of its Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another goal of the Program is to clarify regulations so that they more effectively convey the standards the OCC seeks to apply.

The OCC intends for this proposal to reduce regulatory costs and other burdens on national banks by eliminating regulatory requirements that are neither essential to maintaining the safety and soundness of national banks nor needed to accomplish the OCC's statutory responsibilities. The proposal also seeks comments on whether it would be useful for the OCC to issue additional guidance on the differences between the requirements of part 31 and 12 CFR part 32 (Lending Limits).

Discussion

Current part 31 contains two subparts. Subpart A implements 12 U.S.C. 375a(4) and 375b(3) by setting a limit on the amount that a national bank may lend to any one of its executive officers other than for housing- and education-related loans and by establishing a threshold above which approval of the bank's board of directors is required for any loan to an insider. Subpart B implements 12 U.S.C. 1817(k) and 1972(2)(G)(ii) by requiring a national bank to disclose, upon request, the names of its executive officers and principal shareholders who borrow more than specified amounts from the bank itself or the bank's correspondent banks and to maintain records related to requests for this information. Subpart B also implements 12 U.S.C. 1972(2)(G)(i), which requires a national bank's executive officers and principal shareholders to report on loans they or their related interests receive from the bank's correspondent banks.

This proposal creates three exceptions to the limit on loans that a national bank may make to its executive officers for situations where the lending bank's position is clearly protected by virtue of the type of collateral involved. It also clarifies and simplifies the current rule by removing provisions that are no longer necessary. Finally, it invites comments on whether guidance would be helpful on the differences between the insider lending limits and the loans-to-one-borrower limits and, if so, the areas where clarification may be most needed.

The following discussion identifies and explains material proposed changes to part 31. The OCC invites general comments on the proposed regulation as well as specific comments on the areas identified.

Title of Regulation

The current rule is titled ''Extensions of Credit to National Bank Insiders.''

The proposed rule changes the title to ''Extensions of Credit to Insiders and Transactions with Affiliates.'' This change reflects the proposed relocation to 12 CFR part 31 of several interpretations regarding transactions with affiliates that currently are set out in part 7. (*See* ''Interpretations'' and text that follows for further discussion of the relocation.)

Subpart A—Loans to Insiders

Definitions (Proposed § 31.2)

Current § 31.3 states that the definitions contained in §§ 215.2 and 215.3 of Regulation O (12 CFR part 215) apply to subpart A of part 31.

Proposed § 31.2 also states that the definitions used in §§ 215.2 and 215.3 of Regulation O apply. However, because proposed § 31.3 uses a term (capital and surplus) that is Not defined in Regulation O, proposed § 31.2 states that ''capital and surplus'' will be defined in the same way as that term is defined in part 32 (Lending Limits) (12 CFR 32.2(b)). This clarifies that national banks calculate their loans-to-one-borrower lending limits and their insider lending limits using the same capital base.[1]

Loan Limits (Proposed § 31.3)

Current § 31.2(a) prohibits a national bank from making a loan to an executive officer if the loan, when aggregated with all other loans outstanding from the bank to the officer, would exceed the higher of $25,000 or 2.5 percent of the bank's capital and unimpaired surplus, up to $100,000. However, the current rule exempts home mortgage and educational loans from this limit pursuant to sections 22(g)(2) and 22(g)(3) of the Federal Reserve Act (12 U.S.C. 375a (2) and (3)).[2] Loans that do not comply with sections 22(g)(2) or 22(g)(3) often are referred to as ''other purpose loans,'' because they are for purposes other than those identified in those sections of the Federal Reserve Act.

Pursuant to the rulemaking authority in 12 U.S.C. 375(a)(4), proposed § 31.3(a) exempts a loan from the limits applicable to ''other purpose loans'' if the loan is secured by United States obligations, obligations guaranteed by a Federal agency, or a segregated deposit account.[3] The proposal effects this change by incorporating the exceptions set forth in the OCC's Lending Limits regulation at 12 CFR 32.3(c)(3), (c)(4)(ii), and (c)(6). The proposal also clarifies that the limits prescribed by § 31.3(a) do not apply to executive officers of affiliates of the lending bank.

The OCC believes that the proposed exceptions, which entail situations where the lending bank's position is secure by the nature of the collateral required, are consistent with safe and sound banking practices and would eliminate unnecessary restrictions on lending by national banks. Moreover, in the insider lending context, loans that qualify for the exceptions remain subject to the safeguards found in sections 22(g)(1) and 22(h)(2) of the Federal Reserve Act (12 U.S.C. 375a(1) and 375b(2)), thereby providing additional protection against abuse.[4]

Both the Federal Deposit Insurance Corporation (FDIC) and the Board have amended their insider lending rules to include exemptions similar to those noted above. See 59 FR 66666 (December 28, 1994) (amending the FDIC's rule at 12 CFR 337.3) and 59 FR 8831 (February 24, 1994) (amending the Board's rule at 12 CFR 215.5).[5] The OCC

[1] Regulation O uses the term ''unimpaired capital and unimpaired surplus.'' *See* 12 CFR 215.2(i). The Board of Governors of the Federal Reserve System (Board) recently amended Regulation O to conform the definition of ''unimpaired capital and unimpaired surplus'' to the definition of ''capital and surplus'' as defined in part 32 (60 FR 31053, June 13, 1995). Accordingly, the capital base from which different limits are measured now is the same, despite the different terminology.

[2] Section 22(g)(2) of the Federal Reserve Act permits a member bank (and, therefore, a national bank) to make a loan to one of its executive officers if the loan is secured by a first lien on a dwelling that the officer will own and use as his or her residence after the loan is made. Section 22(g)(3) permits a member bank to make a loan to an executive officer to finance the education of the officer's children.

[3] The OCC currently exempts these loans from the limits on loans to one borrower. *See* 12 CFR 32.3(c)(3), (4), and (6). The only difference between the exceptions in proposed part 31 and the exceptions currently available under part 32 is that the proposal does not include the exemption for loans *to* a Federal agency (12 CFR 32.3(c)(4)(i)), given that this exemption does not apply to loans to executive officers.

[4] Section 22(g)(1) of the Federal Reserve Act requires that any loan by a member bank to one of its executive officers be promptly reported to the bank's board of directors. The bank may make the loan to the executive officer only if it is authorized to make the loan to borrowers other than its officers, the loan is on terms not more favorable than those afforded other borrowers, and the officer has submitted a detailed current financial statement. Section 22(h)(2) authorizes a member bank to make a loan to a bank insider only if the loan is made on substantially the same terms as those prevailing at the time for comparable transactions by the bank with persons who are not insiders, the loan does not involve more than the normal risk of repayment or present other unfavorable features, and the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with non-insiders.

[5] The Office of Thrift Supervision's regulation automatically applies the Board's insider lending rule to thrifts. *See* 12 CFR 563.43. Accordingly, the amendment to 12 CFR 215.5 also applies to thrifts. The OCC also believes that the current restrictions run counter to section 303(a)(1)(A) of the CDRI, which requires the Federal banking agencies to eliminate unwarranted constraints on credit availability. The OCC has observed no significant problems arising from the exemptions in the loans-to-one-borrower context. This experience, coupled with the safeguards provided by sections 22(g) and

believes the disparity between its rule and those of the other Federal banking agencies is both unnecessary and inconsistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) (12 U.S.C. 4803), which requires each agency to work with the other Federal banking agencies to make uniform all regulations and guidelines implementing common statutory or supervisory policies. CDRI, section 303(a)(2).

For these reasons, the OCC proposes to eliminate the special restrictions on extensions of credit by national banks to their executive officers, provided the loans are secured in the manner previously described. The OCC seeks comment on whether interested parties agree that the exemptions are appropriate for national banks.

Current § 31.2(b) requires a majority of the directors of a national bank to approve in advance a loan to one of the bank's executive officers, principal shareholders, or directors (or to any related interest of such persons) if the amount of the loan, when aggregated with other loans outstanding to that insider and his or her related interests, exceeds the higher of $25,000 or 5 percent of the bank's capital and surplus. In no event may a national bank lend more than $500,000 to an insider and his or her related interests without the majority of the bank's board first approving the loan. Interested directors must abstain from the voting.

Proposed § 31.3(b) amends the OCC's rule to conform to recent changes made to the definitions of ''director,'' ''executive officer,'' and ''principal shareholder'' in Regulation O (12 CFR 215.2(d), (e), and (m), respectively). The Board narrowed these definitions so that they generally apply just to insiders of the bank and not to its affiliates. At the same time the Board narrowed these definitions, it also clarified, in 12 CFR 215.4(b)(1), that the prior approval requirements continue to apply to insiders of the bank as well as insiders of the bank's affiliates. Proposed § 31.3(b) also makes this clarification.

It should be noted that the exemptions set forth in proposed § 31.3(a) do not apply to proposed § 31.3(b). Thus, a loan secured, for instance, by a segregated deposit account still must be counted for purposes of determining whether prior approval is required under proposed § 31.3(b). This provides an additional protection against insider abuse by insuring that a bank's directors will have the opportunity to review loans to insiders in amounts that exceed the specified thresholds.

Subpart B—Reports and Public Disclosure

Authority and OMB Control Number (§ 31.4)

Current § 31.4 states the authority pursuant to which subpart B is issued and sets forth the Office of Management and Budget (OMB) control number.

The proposed rule removes the statement of the OMB control number from part 31 but retains the statement of authority. In a separate rulemaking, the OCC will relocate all OMB control numbers to 12 CFR part 4.

Definitions (Proposed § 31.5)

Current § 31.5(d) states, as a general matter, that the definitions found in subpart B of Regulation O (12 CFR 215.20 through 215.23) apply to subpart B of part 31. Current § 31.5(d) also states that, for purposes of the requirement governing reports of loans to insiders from the insider's bank, the term ''bank'' means Federally-chartered insured bank.

The proposal relocates the definition section to proposed § 31.5 and incorporates into subpart B of part 31 the definitions found in subpart B of Regulation O. The proposal also clarifies, for the reasons stated in the discussion of proposed § 31.2, that the term ''capital and surplus'' in part 31 has the same meaning as ''capital and surplus'' as that term is used in 12 CFR part 32. The proposal also removes an obsolete reference to 12 U.S.C. 1817.

Disclosure of Insider Indebtedness (Proposed § 31.6)

Current § 31.5 requires a national bank to disclose, if requested, the names of each executive officer and principal shareholder whose aggregate indebtedness (including debt of the insider's related interests) from either the bank or its correspondent banks equals or exceeds the lesser of 5 percent of the bank's capital and unimpaired surplus or $500,000.[6] The current rule also requires a national bank to maintain records of requests for information for two years following the request.

Proposed § 31.6 makes no substantive change, but revises the current section's style in order to improve clarity. Proposed § 31.6(a) uses the term ''capital and surplus'' instead of ''capital and unimpaired surplus,'' which is used in the current regulation. This change conforms subpart B of part 31 to subpart A. The proposal also clarifies, in § 31.6(c), that the two-year period for retaining records of requests and the disposition of requests begins on the date of the request.

Reports by Executive Officers and Principal Shareholders (Proposed § 31.7)

Current § 31.6 implements 12 U.S.C. 1972(2)(G)(i), which requires national bank executive officers and principal shareholders to file annual reports with their bank's board of directors showing indebtedness from correspondent banks to the insiders or their related interests. The current rule states that ''This requirement is restated in Regulation O, 12 CFR 215.22,'' thereby implicitly incorporating the provisions of the section cited.

Proposed § 31.7 clarifies that 12 U.S.C. 1972(2)(G)(i) requires reports only if the executive officer or principal shareholder (or their related interests) have credit outstanding at some point during the year. The proposed rule also clarifies that all of the provisions of 12 CFR 215.22 apply. The OCC does not intend any substantive change by these proposed amendments.

Interpretations

On March 3, 1995, the OCC proposed to relocate several interpretations that currently appear in part 7. *See* 60 FR 11924, 11930 (proposing to relocate 12 CFR 7.7355 (debts of affiliates), 7.7360 (loans secured by stock or obligations of an affiliate), 7.7365 (Federal funds transactions between affiliates), and 7.7370 (deposits between affiliated banks)). The OCC proposed to relocate these interpretations to part 31 because the interpretations and part 31 stem from the same concern about persons or entities taking undue advantage of positions of influence and thereby adversely affecting the safety and soundness of a national bank. Given the similarities in the supervisory concerns that prompted both part 31 and the interpretations, the OCC believes that it is more appropriate to include the interpretations in part 31 rather than in a collection of unrelated interpretations. The OCC also believes that relocating the interpretations to part 31 will make them easier to find.

The proposed rule restates the latter three of these interpretations at new §§ 31.100–31.102. Current § 7.7355, which interprets the prohibition against a national bank withdrawing its capital, will be relocated to part 5 to consolidate all provisions related to changes in a national bank's equity capital. The OCC

22(h), leads the OCC to conclude that limiting the amount of loans secured in the manner in question is unwarranted.

[6] This requirement applies only to aggregate indebtedness that exceeds $25,000.

invites comments on these interpretations.

Additional Guidance Regarding Differences Between Lending Limits and Insider Lending Standards

The OCC seeks comment on whether it would be useful for the OCC to issue guidance clarifying the differences between the loans-to-one-borrower limits (12 CFR part 32) and the insider lending limits (part 31). For instance, the attribution rules and the definition of ''extension of credit'' applied by the OCC in the two regulations are similar but sufficiently different that a banker or bank counsel must keep straight two different sets of rules that often will apply to the same transaction. In many cases, these differences are compelled by differences in the underlying statutory authority for the two parts. The OCC requests that commenters who believe that this type of guidance would be helpful also identify areas where the intersection of the two rules gives rise to the most uncertainty. In this way, the OCC can focus any guidance it provides on those areas where help is most needed. The OCC also requests comment on whether the guidance should appear in an appendix to part 31, as an OCC bulletin, or in some other format.

The following table directs readers to the provision(s) of the current regulation, if any, upon which the proposed provision is based, and identifies generally the action taken.

DERIVATION TABLE

Revised section	Original section	Comments
31.1	31.1	No change.
31.2	31.3	Relocated and modified.
31.3(a)(1)	31.2(a)	Modified.
31.3(a)(2)		Added.
31.3(b)	31.2(b)	Modified.
31.4	31.4	Modified.
31.5	31.5(d)	Relocated and modified.
31.6(a)	31.5(a)	Modified.
31.6(b)	31.5(b)	Modified.
31.6(c)	31.5(c)	Modified.
31.7	31.6	Modified.
31.100	7.7360	Relocated and modified.
31.101	7.7365	Relocated.
31.102	7.7370	Relocated and modified.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by eliminating and clarifying current regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a proposal likely to result in a rule that includes a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating a proposal. The OCC has determined that the proposal, if adopted, will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 31

Credit, Disclosure, Executive officers, National banks, Principal shareholders, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, the OCC proposes to revise part 31 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 31—EXTENSIONS OF CREDIT TO INSIDERS AND TRANSACTIONS WITH AFFILIATES

Subpart A—Loans to Insiders

Sec.
31.1 Authority.
31.2 Definitions.
31.3 Loan limits.

Subpart B—Reports and Public Disclosure

31.4 Authority.
31.5 Definitions.
31.6 Disclosure of insider indebtedness.
31.7 Reports by executive officers and principal shareholders.

Interpretations

31.100 Loans secured by stock or obligations of an affiliate.
31.101 Federal funds transactions between affiliates.
31.102 Deposits between affiliated banks.

Authority: 12 U.S.C. 375a(4), 375b(3), 1817(k), and 1972(2)(G)(ii), as amended.

Subpart A—Loans to Insiders

§ 31.1 Authority.

The part is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 375a(4) and 375b(3), as amended.

§ 31.2 Definitions.

For the purposes of this subpart, the definitions of the terms contained in Regulation O, 12 CFR 215.2 and 215.3, apply, except that the term ''capital and surplus'' as used in this subpart has the same meaning as ''capital and surplus'' as defined in 12 CFR 32.2(b).

§ 31.3 Loan limits.

(a) *Lending limit on loans to executive officer*—(1) *General limit.* Except as provided in paragraph (a)(2) of this section, a national bank may not extend credit to an executive officer of the bank in an amount that, when aggregated with all other outstanding extensions of credit to that officer, exceeds the greater of $25,000 or 2.5 percent of the bank's capital and surplus, or in any event $100,000. The restrictions of this section apply only to executive officers of the national bank and not to executive officers of its affiliates.

(2) *Exceptions.* The general limit specified in paragraph (a)(1) of this section does not apply to the following:

(i) A loan made for the purpose described in 12 U.S.C. 375a(2) (housing-related loans) or 12 U.S.C. 375a(3) (loans made to finance the education of the officer's children); and

(ii) A loan secured in a manner described in 12 CFR 32.3(c)(3) (secured by United States obligations), 12 CFR 32.3(c)(4)(ii) (secured by obligations guaranteed by a Federal agency), or 12 CFR 32.3(c)(6) (secured by a segregated deposit account).

(b) *Approval limits on all loans to an insider.* Notwithstanding paragraph (a) of this section, a national bank may not extend credit to an insider of the bank or insider of its affiliates in an amount that, when aggregated with all other extensions of credit to that insider, exceeds the greater of $25,000 or 5 percent of the bank's capital and surplus, or in any event $500,000, unless:

(1) A majority of the lending bank's entire board of directors approves the loan in advance; and

(2) The interested party abstains from participating directly or indirectly in the vote.

Subpart B—Reports and Public Disclosure

§ 31.4 Authority.

This subpart is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 1817(k) and 12 U.S.C. 1972(2)(G)(ii), as amended.

§ 31.5 Definitions.

The definitions set forth in 12 CFR 215.21 apply to this subpart, except that ''capital and surplus'' has the same meaning as ''capital and surplus'' as defined in 12 CFR 32.2(b), and, for purposes of § 31.5(a)(1), ''bank'' means an insured national bank.

§ 31.6 Disclosure of insider indebtedness.

(a) Upon receipt of a written request, a national bank shall disclose the name of each of its executive officers and principal shareholders whose aggregate indebtedness (including indebtedness of related interests of such persons) from either—

(1) The insider's bank as of the latest calendar quarter, or

(2) The bank's correspondent banks at any time during the previous calendar year, equals or exceeds the lesser of 5 percent of the bank's capital and surplus or $500,000. This requirement applies only if the insider's (and his or her related interest's) aggregate indebtedness described in paragraphs (a)(1) or (a)(2) of this section exceeds $25,000.

(b) A national bank need not disclose additional information concerning indebtedness of its executive officers and principal shareholders. The bank may base its disclosure under paragraph (a)(1) of this section on the bank's most recent Consolidated Report of Condition and Income. The bank may base its disclosure under paragraph (a)(2) of this section on information contained in the reports referred to in § 31.6.

(c) A national bank shall maintain records of any requests for information under paragraph (a) of this section and records of the disposition of these requests for two years from the date of the request.

§ 31.7 Reports by executive officers and principal shareholders.

Pursuant to 12 U.S.C. 1972(2)(G)(i), each executive officer and principal shareholder of a national bank shall report annually to the bank's board of directors his or her indebtedness, and the indebtedness of his or her related interests, from correspondent banks of the insider's bank. For purposes of this section, the requirements stated in 12 CFR 215.22 (which implements the insider reporting requirements imposed by 12 U.S.C. 1972(2)(G)(i)) apply.

Interpretations

§ 31.100 Loans secured by stock or obligations of an affiliate.

If a loan to an affiliate is otherwise adequately secured in compliance with 12 U.S.C. 371c(c), a national bank may take a security interest in the securities of an affiliate as additional collateral without the loan being considered a covered transaction for purposes of the limits on transactions with affiliates in 12 U.S.C. 371c(a)(1) (A) and (B).

§ 31.101 Federal funds transactions between affiliates.

The limitations contained in 12 U.S.C. 371c apply to the sale of federal funds by a national bank to an affiliate of the bank.

§ 31.102 Deposits between affiliated banks.

(a) *General rule.* The OCC considers a deposit made by a bank in an affiliated bank to be a loan or extension of credit to the affiliate under 12 U.S.C. 371c. These deposits must be secured in accordance with 12 U.S.C. 371c(c). However, a national bank may not pledge assets to secure private deposits unless otherwise permitted by law (see, e.g., 12 U.S.C. 90 (permitting collateralization of deposits of public funds); 12 U.S.C. 92a (trust funds); and 25 U.S.C. 156 and 162a (Native American funds)). Thus, unless one of the exceptions to 12 U.S.C. 371c noted in paragraph (b), of this section, applies or unless another exception applies that enables a bank to meet the collateral requirements of 12 U.S.C. 371c(c), a national bank may not:

(1) Make a deposit in an affiliated national bank;

(2) Make a deposit in an affiliated State-chartered bank unless the affiliated State-chartered bank can legally offer collateral for the deposit in conformance with applicable State law and 12 U.S.C. 371c; or

(3) Receive deposits from an affiliated bank.

(b) *Exceptions.* The restrictions of 12 U.S.C. 371c (other than 12 U.S.C. 371c(a)(4), which requires affiliate transactions to be consistent with safe and sound banking practices) do not apply to deposits:

(1) Made in the ordinary course of correspondent business; or

(2) Made in an affiliate that qualifies as a ''sister bank'' under 12 U.S.C. 371c(d)(1).

Dated: November 28, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–30028 Filed 12–8–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–226–AD]

Airworthiness Directives; Boeing Model 747 Series 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), applicable to certain Boeing Model 747 series airplanes, that would have required modification of the left and right inboard elevator servo assemblies and the hydraulic routing of the right inboard elevator power control package (PCP). That proposal was prompted by a report of an uncommanded right elevator deflection after takeoff and reports of elevator/control column bumps during landing gear retraction on these airplanes. This action revises the proposed rule by revising the applicability of the proposed AD to add additional airplanes and additional part numbers of the elevator PCP's, and by including additional service information. The actions specified by this proposed AD are intended to prevent uncommanded elevator deflection, which could result in structural damage and reduced controllability of the airplane.

DATES: Comments must be received by January 5, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–226–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; and Parker Hannifin Corporation, Customer Support Operations, 16666 Von Karman Avenue, Irvine, California 92714. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathi N. Ishimaru, Aerospace Engineer,

Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2674; 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 94–NM–226–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–226–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 certain Boeing Model 747 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on March 3, 1995 (60 FR 11942). That NPRM would have required modification of the left and right inboard elevator servo assemblies and re-routing the hydraulic tubing of the inboard elevator power control package (PCP). That NPRM was prompted by a report of an uncommanded right elevator deflection after takeoff and reports of elevator/control column bumps during landing gear retraction on these airplanes. That condition, if not corrected, could result in structural damage and reduced controllability of the airplane.

Due consideration has been given to the comments received in response to the NPRM.

One commenter requests that paragraph (a) of the proposal be revised to cite the latest revision of Boeing Alert Service Bulletin 747–27A2348 when referring to the applicability of that paragraph. This commenter states that Revision 1 of the service bulletin includes additional airplanes that are also subject to the proposed AD. The FAA concurs. The FAA inadvertently cited the original version, dated November 17, 1994, of Boeing Alert Service Bulletin 747–27A2348 in paragraph (a) of the proposal when referring to the applicable airplanes for that paragraph. Since that revision level is incorrect, the FAA has removed it and referenced Revision 1, dated January 26, 1995, in its place in paragraph (a) of the supplemental NPRM.

One commenter states that Model 747SP series airplanes should be subject to paragraph (b) of the proposal. The FAA acknowledges that Model 747SP series airplanes were inadvertently omitted from the applicability of the proposal. The FAA's intent was that the proposed rule be applicable to all Model 747 series airplanes (i.e., Model 747–100, –200B, –200F, –200C, 747SR, 747SP, 747–100B, –300, –100B SUD, –400, –400D, and –400F series airplanes). Therefore, the FAA has revised the applicability statement of the supplemental NPRM accordingly.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

In addition, due consideration has been given to the following additional comments, which do not change the scope of the originally proposed rule, received in response to the NPRM.

Three commenters request that the compliance time for paragraph (a) of the proposal be extended from the proposed 1 year. One of these commenters states that such an extension will allow operators to accomplish the modification during a regularly scheduled heavy maintenance visit. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspects of installing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The manufacturer has advised that an ample number of required parts should be available for modification of the U.S. fleet within the proposed compliance period. Further, the FAA has determined that a heavy maintenance visit is not required to accomplish the modification.

Several commenters state that paragraph (b) of the proposed rule is unjustified because there have been no reports of actuator jamming on the classic Model 747 (747–100, –100B SUD, –200, –300, SR, SP) series airplanes after accumulating 87 million flight hours. One of these commenters states that the safety concern surrounding the configuration of the servo valve assembly of the inboard elevator PCP is theoretical at best.

The FAA does not concur with the commenters' suggestion that paragraph (b) of the proposed rule is unjustified. The FAA finds that the lack of reported jams and subsequent uncommanded elevator motion may be attributed, in part, to the small percentage of airplanes that recorded the elevator position while accumulating the 87 million flight hours. Paragraph (c)(10) of section 121.343, ''Flight recorders'', of the Federal Aviation Regulations (FAR) (14 CFR 121.343) requires that operators record either the control column or pitch control surface position (i.e., the position of the elevator and the stabilizer) of the airplane. Operators may comply with section 121.343 by electing to record the control column position, which is not a positive indicator of the elevator position. Consequently, incidents of uncommanded elevator motion due to actuator jamming may have occurred, but were not reported due to the flightcrew's inability to confirm the anomaly. Furthermore, the FAA finds that uncommanded elevator motion may occur on all Boeing Model 747 series airplanes if the servo valve secondary slide moves to the valve's internal stop. Therefore, the FAA finds that this AD action is warranted since an unsafe condition exists, which is identified as reduced controllability or structural damage to the airplane due to asymmetric elevator.

One commenter states that only Model 747–400 series airplanes have experienced actuator jamming with uncommanded elevator deflection. The commenter also states that the uncommanded elevator deflection problem has been directly attributed to

the fact that Model 747–400 series airplanes have the hydraulic system number 4 connected to the pressure sensitive side of the servo valve of the right inboard elevator PCP. The commenter contends that rerouting the hydraulic tubing, as required by paragraph (a) of the proposal (which references Boeing Alert Service Bulletin 747–27A2348, Revision 1, dated January 26, 1995, as the appropriate source of service information) will alleviate this problem. The commenter notes that Model 747–100, –200, –300, and SP series airplanes, which do not have the hydraulic system number 4 connected to the pressure sensitive side of the servo valve of the right inboard elevator PCP, have not experienced the uncommanded elevator deflection problem.

From this comment, the FAA infers that the commenter is requesting that paragraph (b) of the proposal be deleted. The FAA does not concur. The FAA has reviewed the pressure survey data for the number 3 and number 4 systems that was submitted by another commenter. The FAA finds that pressure fluctuations, which contribute to uncommanded elevator deflection, occur in hydraulic system number 3, as well as hydraulic system number 4. Therefore, the FAA finds that these data do not substantiate the commenter's suggestion that routing the hydraulic system number 3 to the sensitive side of the servo valve would preclude uncommanded elevator deflection.

One commenter states that paragraph (b) of the proposal, which is applicable to certain Model 747–100, –200, –300, and –400 series airplanes, references Parker Service Bulletin 327400–27–171 as the appropriate source of service information. The commenter further states that this service bulletin is not applicable to certain Model 747–100, –100B SUD, –200, –300, SR, and SP series airplanes, since the elevator power control packages specified in Parker Service Bulletin 327400–27–171 are not installed on these airplanes. The FAA's intent was to reference a service bulletin that addressed a modification for all affected airplane models. The FAA has reviewed and approved Parker Service Bulletin 93600–27–173, dated May 17, 1995. The modification procedures described in this service bulletin are identical to those described in Parker Service Bulletin 327400–27–171. The effectivity listing of Parker Service Bulletin 93600–27–173 contains elevator PCP's having part numbers (P/N) 93600–5005 through –5051 inclusive, which are installed on certain Model 747–100, –100B SUD, –200, –300, SR, and SP series airplanes. The FAA has revised the applicability statement of the supplemental NPRM to include these additional P/N's. Additionally, the FAA has revised paragraph (b) of the supplemental NPRM to include this service bulletin as an additional source of service information.

One commenter requests that applicability of paragraph (b) of the proposal be limited to Model 747–100, –100B SUD, –200, –300, SR, and SP series airplanes (''classic'') having cumulative line (C/L) 696 and subsequent and that the compliance time be extended from 3 years to 5 years for those airplanes. The commenter contends that the aft fuselage limit load can be exceeded if the residual pressure at the actuator pistons exceeds 800 pounds per square inch (psi)/cylinder. The commenter further contends that the probability of exceeding this is less than $1 \times 10e{-}5$. This pressure assumes the valve jammed at the most adverse position achievable from pilot inputs. The commenter states that the aft fuselage limit load can be exceeded for classic airplanes having C/L 001 through 695 inclusive, if the residual pressure at the actuator pistons exceeds 1,700 psi/cylinder. The commenter also states that the probability of exceeding the structural limit is less than $1 \times 10e{-}9$.

The FAA does not concur with the commenter's request to limit the applicability and extend the compliance time of paragraph (b) of the proposal. Following a review of the commenter's probability analysis, the FAA has determined that the commenter has based its analysis on a sampling that was much too small from which accurate statistical conclusions that would be representative of the fleet could be drawn. Further, the FAA finds that the flow rate and differential pressures used by this commenter were not substantiated to be the worst case scenario. Therefore, based on this flawed probability analysis, no change to the supplemental NPRM is warranted.

One commenter requests that Boeing Model 747–400 series airplanes be removed from the applicability of paragraph (b) of the proposal. The commenter states that if the valve jams, the resultant asymmetric elevator will not result in structural damage on these airplanes. The FAA does not concur. The FAA has determined that, although the asymmetric elevator may not damage Model 747–400 series airplanes, an unsafe condition (i.e., reduced controllability) still exists.

Two commenters request that the compliance time for paragraph (b) of the proposal be extended from the proposed 3 years to 5 years. One commenter states that it does not have enough seed units to accomplish the modification at their own facilities within the proposed compliance time. The FAA does not concur. As stated above, the FAA considered the availability of required parts and the practical aspects of installing the required modification. In addition, the FAA finds that other maintenance facilities are available to operators that are unable to accomplish the modification at their own facilities. However, under paragraph (c) of the proposed rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

One commenter questions the FAA's estimate of the cost of required replacement parts for classic Model 747 series airplanes. The commenter states that the $3,720 per airplane figure, presented in the cost impact information in the preamble to the notice, is too low. This commenter suggests that parts costs will be approximately $7,440 per airplane (2 elevator power control packages at $3,720 each). After considering the data presented by the commenter, the FAA concurs that the cost of required parts per airplane is higher than previously estimated; the economic impact information, below, has been revised to indicate this higher amount.

There are approximately 672 Model 747–100, –100B SUD, –200, –300, SR, and SP series airplanes, and 357 Model 747–400 series airplanes of the affected design in the worldwide fleet, a total of 1,029 airplanes.

The FAA estimates that 114 Model 747–100, –100B SUD, –200, –300, SR, and SP series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 73 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 $7,440 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,347,480, or $11,820 per airplane.

The FAA estimates that 65 Model 747–400 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 111 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 $12,269 per airplane. Based on these figures, the cost impact

of the proposed AD on U.S. operators is estimated to be $1,230,385, or $18,929 per airplane.

The 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:

Boeing: Docket 94–NM–226–AD.

Applicability: Model 747 series airplanes, equipped with Parker inboard elevator power control packages (PCP) having part numbers (P/N) 93600–5005 through –5051 inclusive, or P/N's 327400–1001, –1003, –1005, and –1007; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded elevator deflection, which could result in structural damage and reduced controllability of the airplane, accomplish the following:

(a) For Model 747–400 series airplanes, as listed in Boeing Alert Service Bulletin 747–27A2348, Revision 1, dated January 26, 1995: Within 1 year after the effective date of this AD, modify the hydraulic tubing of the right inboard elevator PCP, in accordance with Boeing Alert Service Bulletin 747–27A2348, Revision 1, dated January 26, 1995.

(b) For all airplanes: Within 3 years after the effective date of this AD, modify the left and right servo assemblies of the inboard elevator PCP, in accordance with Parker Service Bulletin 327400–27–171, Revision 1, dated April 14, 1995, or Parker Service Bulletin 93600–27–173, dated May 17, 1995, as applicable.

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

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

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

Issued in Renton, Washington, on December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30074 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–99–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 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 Fokker Model F28 Mark 0100 series airplanes. This proposal would require inspections to verify the correct operation of the main landing gear (MLG) downlock actuators, and replacement of any discrepant unit with a serviceable unit. The proposed AD also would require eventual replacement of the MLG downlock actuators with improved units. This proposal is prompted by reports of improper operation of the MLG downlock actuator due to jamming. The actions specified by the proposed AD are intended to prevent such jamming of the downlock actuator, which could result in failure of the MLG downlock system, and a potential gear-up landing.

DATES: Comments must be received by January 22, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–99–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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314, and Dowty Aerospace, Customer Support Center, P.O. Box 49, Sterling, VA 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–99–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–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that several operators of these airplanes have reported that landing gear ''unsafe'' warning indications have appeared on the multi-function display unit (MFDU) after the flight crew selected the landing gear to the down position. In most cases, recycling the landing gear resulted in a positive downlock indication. Investigation revealed that the main landing gear (MLG) downlock actuator (jack and springpot unit) did not operate properly. Further investigation revealed that the tip of a spring carrier broke due to a malformed piston rod and a spring that was not square, which caused the spring carrier to move at an angle. A jammed actuator could result in failure of the MLG downlock system. This condition, if not corrected, could result in a gear-up landing.

Fokker has issued Service Bulletin SBF100–32–072, dated March 30, 1993, which describes procedures for repetitive inspections to verify the correct operation of any MLG downlock actuator having part number (P/N) 201218001, 201218002, 201218003, or 201218004, and replacement of discrepant units with serviceable units. The Fokker service bulletin references Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993. The Dowty Aerospace Hydraulics service bulletin contains additional procedures for accomplishment of the inspection. For airplanes on which the MLG downlock actuator operates correctly, the Dowty Aerospace Hydraulics service bulletin also specifies procedures for recording the accomplishment of each inspection on the unit nameplate.

Fokker also has issued Service Bulletin SBF100–32–074, dated July 21, 1993, which describes procedures for replacement of any MLG downlock actuator having P/N 201218001, 201218002, 201218003, or 201218004 with an improved unit having P/N 201218005, 201218006, 201218007, or 201218008, respectively. The improved units have improved jack and springpot units with modified spring carriers and spring actuators, as well as a new end fitting subassembly and nut. The Fokker service bulletin references Dowty Aerospace Hydraulics Service Bulletin F100–32–506, dated June 9, 1993, as an additional source of service information.

The RLD classified these service bulletins as mandatory and issued Netherlands airworthiness directive BLA 93–052/2 (A), dated September 10, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands 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 RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections to verify the correct operation of the MLG downlock actuators; and replacement of any discrepant unit with a serviceable unit. For airplanes on which no discrepant unit is found, the proposed AD also would require recording the accomplishment of each inspection on the unit nameplate. In addition, the proposed AD would require eventual replacement of the MLG downlock actuators with improved units. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 119 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 21 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would be supplied by the vendor at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $149,940, or $1,260 per airplane.

The 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:

Fokker: Docket 95–NM–99–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Dowty Aerospace Hydraulics main landing gear (MLG) downlock actuators having part number (P/N) 201218001, 201218002, 201218003, or 201218004, all serial numbers; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the MLG downlock actuator and a potential gear-up landing, accomplish the following:

(a) Within 2 months after the effective date of this AD, and thereafter at intervals not to exceed 1,250 landings: Perform an inspection to verify correct operation of the MLG downlock actuator having P/N 201218001, 201218002, 201218003, or 201218004, all serial numbers, in accordance with Fokker Service Bulletin SBF100–32–072, dated March 30, 1993, and Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993.

(1) If the MLG downlock actuator operates as specified in the inspection procedure contained in the Accomplishment Instructions of Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993, prior to further flight, record the accomplishment of the inspection on the unit nameplate in accordance with the Dowty Aerospace Hydraulics service bulletin. Following accomplishment of each subsequent inspection required by this AD, record the accomplishment of the inspection in accordance with the requirement of this paragraph.

(2) If any MLG downlock actuator does not operate as specified in the inspection procedure contained in the Accomplishment Instructions of Dowty Aerospace Hydraulics Service Bulletin F100–32–505, Revision 1, dated April 16, 1993, prior to further flight, replace the downlock actuator with a serviceable unit, in accordance with Chapter 32–32–05 of the Aircraft Maintenance Manual. Thereafter, perform repetitive inspections of the replacement unit in accordance with paragraph (a) of this AD until the replacement required by paragraph (b) of this AD is accomplished.

(b) Within 9 months after the effective date of this AD, replace any MLG downlock actuator having P/N 201218001, 201218002, 201218003, or 201218004, any serial number, with an improved unit having P/N 201218005, 201218006, 201218007, or 201218008, respectively; in accordance with Fokker Service Bulletin SBF100–32–074, dated July 21, 1993, and Dowty Aerospace Hydraulics Service Bulletin F100–32–506, dated June 9, 1993. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane a MLG downlock actuator having P/N 201218001, 201218002, 201218003, or 201218004, any serial number.

(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, 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.

(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 December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30075 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–86–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 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 Fokker Model F28 Mark 0100 series airplanes. This proposal would require inspection(s) to verify that the position indicator of the fuel balance transfer valve (FBTV) is in the closed position, and closing the FBTV, if necessary; and deactivation of the fuel balance transfer system (FBTS). This proposal is prompted by a report that, under certain failure conditions, the actuator of the FBTV could remain in the open position without a flight deck indication. The actions specified by the proposed AD are intended to ensure that the FBTV is not in the open position during flight, which could lead to the reduction of fuel supply to the engines during cross-feed operation and consequent engine fuel starvation.

DATES: Comments must be received by January 22, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–86–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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; 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 95–NM–86–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–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that it has received a report that, under certain failure conditions, the actuator of the fuel balance transfer valve (FBTV) could remain in the open position after maintenance without a flight deck indication. The FBTV is part of the fuel balance transfer system (FBTS) that prevents inadvertent and uncontrolled transfer of fuel. The FBTS is used during maintenance activities to move the center of gravity of the airplane forward, as required, and allows fuel to be transferred from the main tanks to the center tanks through the cross-feed system. If the FBTV remains in the open position during flight, the fuel supply to the engines during cross-feed operation may be reduced, which could lead to engine fuel starvation.

Fokker has issued Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994, which describes procedures for inspection(s) to verify that the position indicator of the FBTV is in the closed position, and closing the FBTV, if necessary; and deactivation of the FBTS. For all airplanes, the deactivation involves disconnecting the power supply to the FBTV. In addition, for certain airplanes, the deactivation involves removing the FBTV actuator, and installing a locking device. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 94–146 (A), dated September 30, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands 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 RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection(s) to verify that the position indicator of the FBTV is in the closed position, and closing the FBTV, if necessary; and deactivation of the FBTS. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 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 $250 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,960, or $490 per airplane.

The 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:

Fokker: Docket 95–NM–86–AD.

Applicability: Model F28 Mark 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an

assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the reduction of fuel supply to the engines during cross-feed operation, which could lead to engine fuel starvation, accomplish the following:

(a) After the effective date of this AD, whenever the fuel balance transfer system (FBTS) is used during maintenance, prior to further flight, perform an inspection to verify that the position indicator of the fuel balance transfer valve (FBTV) is in the closed position, in accordance with Fokker Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994. The inspection requirements of this paragraph must be accomplished until the deactivation required by paragraph (b) of this AD is accomplished.

(1) If the position indicator is in the closed position, no further action is required by this paragraph.

(2) If the position indicator is in the open position, close the FBTV in accordance with the service bulletin.

(b) Within 90 days after the effective date of this AD, deactivate the FBTS in accordance with either Part 2 or Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–030, Revision 1, dated December 5, 1994, as applicable. Accomplishment of the deactivation constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

Issued in Renton, Washington, on December 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30076 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend rule 30.3 to eliminate the requirement that the CFTC authorize the offer and sale of a particular foreign commodity option before it can be offered or sold in the United States. This proposal reflects the Commission's assessment that the continued treatment of foreign commodity options differently from foreign futures (which do not require a specific authorization order) should be reevaluated.

DATES: Comments must be submitted on or before January 10, 1996.

ADDRESSES: Comments should be sent to the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Reference should be made to ''Rule 30.3—Foreign commodity options.''

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418–5435.

SUPPLEMENTARY INFORMATION:

Background

Commission rule 30.3(a) of the Commission's Part 30 rules governing the offer and sale of foreign futures and option transactions makes it unlawful for any person to engage in the domestic offer or sale of any foreign commodity option contract until the Commission, by order, authorizes the foreign option to be offered or sold in the United States.[1] A Commission order is not required with respect to foreign futures. However, an option on a foreign stock-index futures contract will not be approved unless, among other things, the Commission's Office of the General Counsel has issued a no-action letter authorizing the offer and sale in the United States of the underlying foreign stock-index futures contract. In addition, debt obligations of a foreign country must be designated as an exempted security by the SEC under its rule 3a12–8, 17 CFR 240.3a12–8, before a futures contract based on such debt obligation (or an option on such a futures contract) may be offered or sold to a U.S. person.[2]

The Commission is proposing to eliminate the specific authorization requirement of rule 30.3 thereby permitting, subject to existing prohibitions with respect to stock index futures and options and foreign government debt futures and options products, the offer and sale of foreign commodity options in the same manner as currently applies to the offer and sale of foreign futures. The Commission would, however, continue to monitor the situation and take appropriate action should it determine that U.S. investors, or the Commission, are not able to obtain appropriate information related to the option transactions of a specific exchange or are otherwise being adversely affected by the rule change. Moreover, the proposal would not affect the existing regulatory requirements applicable to the manner in which appropriate products may be offered or sold to U.S. persons, *e.g.*, registration of intermediaries, requirements related to sales practices (including appropriate disclosures), availability to the Commission of books and records and prohibitions on fraudulent activities.

The Commission's determination to propose modifications to the current procedure of regulation 30.3(a) for approval of foreign option products for sale to U.S. persons is based on its experiences with the regulations governing options generally, and, in particular, with the initial regulations imposed on foreign options trading. This proposal reflects the Commission's assessment that the continued treatment of foreign commodity options differently from foreign futures (which do not require a specific authorization order) should be reevaluated.

History of Options Regulation

The regulatory approach to commodity options in the United States

[1] The Commission previously made clear that subject to certain conditions applicable to transactions involving stock indexes and foreign government debt, a rule 30.3 order would not be necessary for transactions effected by U.S. futures commission merchants (FCM) on behalf of foreign customers. *See* 57 FR 36369 (August 13, 1992).

[2] Consistent with section 2(a)(1)(B) of the CEA, this proposed rulemaking would not be applicable to commodity options based on or involving a foreign futures contract based on a foreign stock index unless the foreign stock index futures contract has been approved for offer or sale in the United States through the issuance of a no-action letter by the Commission's Office of the General Counsel. Further, this proposed rulemaking would not be applicable to commodity options based on a foreign government debt which has not been designated as an exempted security under SEC rule 3a12–8.

has been particularly cautious due to the history of abuses which had been associated with such transactions.[3]

Unsatisfactory experiences with what essentially were unregulated sales of options on commodities in the early 1970's, and further abuses under interim regulations adopted in 1976 ultimately resulted in the Commission's suspension of the offer and sale of all commodity options as of June 1, 1978 and the codification of that suspension by Congress in the Commodity Exchange Act of 1978. *See* 46 FR 54500, 54502 (November 3, 1981). The suspension codified by Congress permitted the Commission to introduce option trading, but only if the Commission could document to its Congressional oversight committee its ability to regulate successfully such transactions.[4]

Mindful of this history, in proposing a pilot program for the offer and sale of options in 1981, the Commission expressly stated that it was: [5]

> Cognizant of the need to exercise a strong degree of control over all aspects of commodity option trading.

Thus, the final domestic exchange-traded commodity option rules adopted in 1981 authorized the introduction of options under a limited pilot program which permitted only one option contract per exchange, did not permit either foreign options or options on physical commodities to be offered, and placed significantly greater self-regulatory responsibilities on boards of trade than was then required for futures trading, particularly with respect to the protection of the public from sales practice abuses.[6]

Evolution of Domestic Option Regulations

Although starting narrowly and cautiously, the Commission's options regulations have evolved consistently with the acquisition of an operational history under those regulations. Thus, in December 1982 the Commission expanded the pilot program to permit each exchange to trade one option on a futures contract and one option contract on a non-agricultural physical commodity.[7] The Commission continued to expand the pilot program in a controlled and orderly manner so that both the Commission and the exchanges would obtain greater experience with the trading of options,[8] subsequently expanding the pilot program to permit more option contracts per exchange,[9] to include option contracts on futures contracts on agricultural commodities,[10] and ultimately, to eliminate the pilot status of the option regulations.[11]

The Commission's incremental expansion of the domestic exchange-traded options program was validated by Congress in 1986 when Congress amended section 4c of the CEA to make permanent the program of exchange-traded commodity options. As stated in the House Report on the 1986 legislation: [12]

> The Committee's amendment coincides with a recent decision by the Commission to terminate the pilot status of the program for trading options on futures contracts other than those on domestic agricultural commodities and make the trading of such options permanent. * * *
>
> The Committee believes the Commission has practiced good judgment in its regulation and oversight of both agricultural and the nonagricultural options programs. Furthermore, the Committee is satisfied that the overall experience with both of these pilot programs indicates that few regulatory problems have arisen, and that the exchanges have discharged their responsibilities adequately. Additionally, the Commission has detected no adverse effects on the underlying futures markets resulting from such option trading.

Moreover, based on its administration of the option pilot program for more than ten years, the Commission has previously determined to eliminate certain provisions that were originally part of its options designation requirements for which there were not comparable futures regulation, such as:

—Rule 33.4(b)(9) which required a board of trade applying for designation as a contract market with respect to commodity option transactions to adopt special rules governing the handling by its member FCMs of discretionary accounts in option transactions; [13]

—rules which require boards of trade designated as contract markets for options to adopt rules requiring FCMs that engage in the offer or sale of commodity options regulated under Part 33 to send copies of customer complaints and their resolutions and copies of all promotional materials to the members' designated self-regulatory organization (DSRO); [14] and

—rules which required a specified volume of trading in the underlying futures contract prior to designation; established a delisting criterion for the trading of low-volume contracts; and required exchanges to provide a comprehensive list of occupational categories of commercial users of the commodity underlying the option.[15]

History of Foreign Options Rules.

As noted above, the Commission's initial pilot programs did not include foreign options.[16] Thus the ban contained in section 4c of the CEA remained in effect with respect to foreign options. A program to authorize the offer and sale of foreign exchange-traded commodity options was not implemented until 1987 with the general adoption of the part 30 rules governing foreign futures and option transactions generally.[17] The Part 30 rules, among other things, provided a mechanism for lifting the ban with respect to foreign exchange-traded options. Under rule 30.3(a), foreign exchange-traded commodity options are prohibited from being offered or sold in the United States unless the Commission issues a product-specific order. The part 30 rules did not similarly require a product-specific order for foreign futures transactions.

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[3] The Commission notes that the abuses which characterized the offer and sale of commodity options in the past generally involved sales practices, 46 FR 54500, 54503 (November 3, 1981), including sales activity with respect to alleged ''London options'' (which appeared to have been perpetrated exclusively by sales persons or organizations in the United States, and did not involve any improper activities on the part of foreign exchanges), *see* 42 FR 18246, 18249 (April 5, 1977).

[4] *See* section 4c(c) of the CEA, as amended by the 1978 Act. *See* 46 FR 33293, 33294 (June 29, 1981).

[5] *See* 46 FR 33293, 33294 (June 29, 1981).

[6] *See* 46 FR 54500, 54502 (November 3, 1981).

[7] 47 FR 56996 (December 22, 1982).

[8] *Id.* at 56997.

[9] *See, e.g.*, 49 FR 33641 (August 24, 1984) (permitting each exchange to trade five contracts); 50 FR 45811 (November 4, 1985) (increasing from five to eight the number of contracts permitted per exchange).

[10] 49 FR 2752 (January 23, 1984). The pilot program was established after the statutory bar to trading options on domestic agricultural commodities was repealed by section 206 of the Futures Trading Act of 1982, Pub. L. 97–444, 96 Stat. 2294, 2301 (1983). The Commission limited the pilot program to options on futures contracts on agricultural products. The Commission noted that industry commenters generally favored such a restriction and the Commission's cautious approach. *See* 49 FR at 2754.

[11] *See* 51 FR 17464 (May 13, 1986) (termination of pilot status for non-agricultural options); 53 FR 777 (January 9, 1987) (termination of pilot status for options on non-agricultural physical commodities and on agricultural futures contracts).

[12] *See* H. Rep. 99–624, 99th Cong., 2d Sess. 15 (1986).

[13] 58 FR 30701 (May 27, 1993). The Commission based this rule change on its belief that compliance with the supervisory requirements of rule 166.3, the requirements of rule 166.2 concerning authorization to trade, other Commission rules of general applicability, and SRO rules such as NFA compliance rule 2–8, should be adequate to address the regulatory concerns applicable to both option and futures customer discretionary accounts. *See* 58 FR 30701, 30702.

[14] *See* 57 FR 58976, 58977 (December 14, 1992) (such records must however be maintained by the FCM for review as part of the routine audit process); *see generally* 56 FR 43694 (September 4, 1991).

[15] 56 FR 43694 (September 4, 1991). The Commission also revised rule 33.4(d) which had required exchanges to justify expiration dates of less than 10 days before first notice day or last trading day of the future, whichever comes first.

[16] *See* 46 FR 33293, 33294 (June 29, 1981).

[17] 52 FR 28980 (August 5, 1987).

As with the Commission's pilot program for domestic exchange-traded options, the program for foreign exchange-traded commodity options also has proceeded cautiously. Thus, in issuing the order for any foreign market, the Commission has considered: (1) The availability of certain information relevant to preventing abuses including, but not limited to trade confirmation data; (2) the arrangements in place for assuring that sales practice abuses do not occur; (3) the arrangements for U.S. customers to redress grievances; and (4) the regulatory environment in which such options are traded.[18]

In particular, the Commission placed great stress initially on its ability to obtain information from the foreign exchange with respect to transactions entered into on that exchange on behalf of U.S. customers.[19] As stated in the final rules: [20]

> In order to ensure that foreign commodity exchanges are both willing and able to share appropriate information with the Commission * * * the Commission has determined to make the issuance of a Commission order a prerequisite to the lawful offer and sale of such products.

Reevaluation of foreign options rules.

Since 1987 foreign option sales to U.S. customers have been permitted under the Commission's part 30 rules. Such sales have occurred without the type of sales abuses that historically had been associated with commodity option activities. Contributing to this success has been the requirement that foreign options be sold to U.S. customers by futures commission merchants (which ensures among other things the adequacy of firm capital, fitness of personnel and proper supervision of sales practices); the Commission's Part 30 rules, which seek to ensure that foreign firms directly soliciting U.S. customers for foreign products are otherwise regulated as to their sales practices; [21] and the undertaking by the National Futures Association (NFA) to audit the foreign options sales practices of domestic firms marketing foreign options to domestic customers.[22] In particular, under the current regulatory scheme, firms engaged in the offer or sale of foreign commodity options (and futures) to U.S. customers must either be a Commission registrant or a foreign firm which has qualified to sell foreign products in the United States under the Commission's Part 30 rules based on substituted compliance with a foreign jurisdiction's licensing and fitness requirements and subject to certain other conditions to assure the availability of the firms' records and its submission to Commission jurisdiction under the CEA and U.S. law otherwise.

In the case of NFA, NFA audits generally include the review and analysis of a member firm's trading records, sales materials and practices (sales practices compliance audits), and for FCMs and independent IBs, accounting procedures, financial statements and records (financial audits). NFA's audit programs are designed so that the auditors must perform a certain amount of work at the member firm's office, testing records and resolving any discrepancies. While all NFA members are subject to audit, decisions concerning whether to audit a particular firm are based on a number of factors, including NFA's review of financial statements, monitoring of media advertising, receipt of customer complaints, knowledge of the past history of the firm and its principals, the time elapsed since the previous NFA audit, potential effects of market movements and referrals outside of NFA.

NFA compliance audits have two major objectives: to determine whether the firm is maintaining records in accordance with NFA rules and applicable Commission regulations, and to ascertain that the firm is being operated in a professional manner and that customers are protected against unscrupulous activities, including fraudulent or high-pressure sales practices. The compliance program specifically examines the firm's practices in soliciting accounts and audits could review, among other things: records of customers' orders; customer confirmations and other account statements; records regarding handling of discretionary accounts; disclosure documents, advertising and other promotional material; records of customer complaints; and records relative to the internal supervision of account executives, order handling or sales personnel.[23]

The Commission believes that its experience since 1987 with foreign options justifies a reexamination of the necessity of requiring a specific option authorization order for each options contract offered and sold in the United States, that is, the continuing need for differential treatment of the offer or sale of foreign futures and foreign options in the United States. Just as the Commission's domestic exchange-traded option program has evolved on the basis of accumulated operational experience, the Commission believes that a similar measured evolution, based on experience, is warranted with respect to foreign commodity options.

However, as noted above, the Commission believes that its existing regulatory scheme governing domestic registered firms which deal directly with the public in conjunction with the sales practice program of the NFA—all subject to Commission oversight—should provide adequate sales practice protections for customers who would engage in foreign options transactions through registered FCMs. In this connection, prior to adopting any final rules in this regard, the Commission would need to be assured that arrangements exist through NFA or otherwise to ensure that sales practice compliance audits of registrants offering foreign commodity options will be undertaken, thereby ensuring complete sales practice compliance audit coverage of firms (which heretofore has been mandated on a product-specific basis under rule 30.3 orders).

Similarly, the Commission's rule 30.10 orders permitting foreign firms to directly solicit U.S. persons for foreign products address options and futures sales practice concerns. In addition, the Commission notes that existing 30.10 orders have been accompanied by information-sharing arrangements

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[18] *See,* e.g., 53 FR 28840 (July 29, 1988).

[19] *See* 52 FR 28980, 28988 (August 5, 1987).

[20] *Id.*

[21] In reviewing the foreign regulatory program for purposes of rule 30.10, the Commission's staff considers the sales practice compliance review program in effect in the foreign jurisdiction.

[22] Part 33 requires exchanges as a condition of designation as a contract market to have specific options sales practice compliance responsibilities. NFA and the futures exchanges participate in a Joint Audit Plan (Plan) to reduce the duplication of audit and financial surveillance work which otherwise could occur with respect to FCMs which are members of more than one exchange. The plan assigns primary audit and financial surveillance responsibility for each FCM, which is a member of more than one of the SROs, to one of the Plan participants. The SRO which has the primary responsibility is known as that FCM's DSRO. NFA is the DSRO for all FCMs which are not members of any commodity exchange and therefore, do not have an exchange SRO and, in some cases, NFA by agreement is the DSRO for certain exchange member firms. NFA also is the DSRO responsible for surveillance over the financial reporting and recordkeeping by all member CPOs, and independent introducing brokers (IBs), as well as guaranteed IBs whose guaranteeing FCMs have NFA as the DSRO. NFA also is charged with auditing for sales practice compliance all member IBs, CTAs and CPOs, and branch offices of FCMs for which NFA is DSRO, as well as all futures sales practices compliance not contracted to another SRO.

To date, NFA has undertaken, in conjunction with specific Commission orders under rule 30.3(a), to conduct sales practice compliance auditing of registrants marketing particular foreign commodity options under relevant arrangements with such firms' DSRO. Therefore, any revisions to Commission rule 30.3 would be premised on the existence of an audit program to assure general sales practice compliance for all foreign commodity option transactions. *See also* n. 21.

[23] *See* Commission rule 33.4(c); *see also* n. 22.

which assure Commission access to relevant information of the type which previously may not have been available.[24] The Commission further recognizes that its ability to obtain information to confirm the existence of transactions executed on foreign exchanges[25] has been materially enhanced by the numerous information-sharing memoranda of understanding and cooperative arrangements that have been entered with foreign jurisdictions.[26]

Nor would elimination of the authorization requirement negatively affect the access of U.S. customers to existing customer complaint procedures, either under existing rule 30.10 orders for customers directly solicited by foreign firms or under NFA's arbitration rules governing disputes with a foreign party.

Customers solicited by foreign firms operating under a rule 30.10 order will, pursuant to the express terms of such orders, have access to arbitration procedures both abroad and through NFA. Customers transacting through a domestic firm will have the option of electing NFA arbitration procedures. NFA rules governing arbitration of disputes involving foreign parties provide that disputes involving a foreign party may, in the discretion of NFA, be arbitrated if the parties agree to such arbitration (see NFA foreign arbitration rule sec. 2(a)(1)). Demands for arbitration will be rejected, however, if the claim arises primarily out of delivery, clearance, settlement or floor practices of a foreign exchange unless the foreign jurisdiction has no program for the resolution of disputes, in which case NFA will hear such claims. The rule 30.10 order permits the 30.10 firm to require a customer to consent to use a foreign regulator's non-binding mediation or conciliation service prior to initiating an NFA arbitration case. (See NFA Arbitration Policy Statement (March 1, 1989)).

Thus, whether solicited by Commission registrants or foreign firms operating under rule 30.10, the Commission believes that the systems in place to address sales practice abuses and information sharing warrant reexamination of existing procedures.

Finally, the Commission notes that FCMs which are not members of foreign exchanges should assure themselves that there are no statutory or regulatory impediments on their ability to obtain information from foreign exchange-members firms necessary to enable such FCMs to comply with the CEA and regulations thereunder relative to confirming the execution of foreign option transactions.

In conclusion, the Commission believes that the differential treatment of foreign options no longer is justified. Indeed, to the extent that such differential treatment continues under circumstances when such treatment is not warranted based on existing economic and/or regulatory concerns, it risks conveying to traders the incorrect impression that the Commission can provide a greater level of protection with respect to foreign options than with respect to foreign futures. Moreover, as domestic exchanges increasingly seek to link their exchanges electronically with other exchanges worldwide, the presence of an authorization process for commodity options raises, under the current circumstances, an unnecessary obstacle that could competitively disadvantage domestic exchanges.

Proposal

The Commission is therefore proposing to eliminate rule 30.3's requirement that no foreign option may be offered or sold in the United States until the Commission, by order, authorizes such foreign commodity option to be offered or sold in the United States.

The Commission notes that the proposed elimination of the specific authorization requirement in rule 30.3(a) will not affect the existing product restrictions applicable to options on futures contracts based on stock index products (*i.e.*, the underlying stock index futures must be the subject of a no-action letter issued by the CFTC's Office of the General Counsel) and foreign government debt (i.e., the debt product must be designated by the SEC as an exempted security under SEC rule 13a–8) contained in section 2(a)(1)(B)(v) of the CEA.

Accordingly, the Commission invites comment from interested parties on its proposal. Moreover, the Commission specifically invites the contract markets to indicate any other areas in which the designation requirements for options and futures generally could be further harmonized.

Other Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that FCMs should be excluded from the definition of ''small entity'' based upon the fiduciary nature of the FCM/customer relationships as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619 (April 30, 1982). The Commission similarly determined that CPOs are not small entities for purposes of the RFA. 47 FR 18618, 18620 (April 30, 1982). With respect to CTAs and IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule. 47 FR 18618, 18620 (April 30, 1982) (CTAs); 48 FR 35248, 35276 (August 3, 1983) (IBs).

The proposed amendment of rule 30.3 is intended to facilitate the ability of Commission registrants or exempted firms to provide customers with access to desired products by eliminating a current product-by-product authorization requirement, thus providing easier access to a greater number of persons.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Act. The Commission has determined that the proposed amendment does not have any paperwork burden.

Persons wishing to comment on the Commission's determination on the paperwork burden concerning this proposed rule should contact Jeff Hill,

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[24] Significantly, to date, the Commission has not had occasion to request any information under any information sharing arrangement in connection with the approval of a particular exchange foreign option product.

[25] In explaining its decision to suspend the offer and sale of foreign commodity options in the United States, the Commission noted in 1977, among other things, that:

The Commission's investigators and auditors have also encountered great difficulty in their attempts to verify the details of option transactions purportedly effected for Americans on foreign exchanges.

See 43 FR 16153, 16155 (April 17, 1977).

[26] For example, such regulatory and enforcement MOUs and cooperative arrangements have been entered into with authorities in Australia, Argentina, Brazil, Canada, France, Hong Kong, Italy, Japan, Mexico, the Netherlands, Singapore, Spain, Taiwan, and the United Kingdom.

Office of Management and Budget, room 3228, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe Mink, CFTC Clearance Officer, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418–5170.

List of Subjects in 17 CFR Part 30

Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a, the Commission hereby proposes to amend part 30 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Section 30.3 is proposed to be amended by revising paragraph (a) to read as follows:

§ 30.3 Prohibited transactions.

(a) It shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign options transaction for or on behalf of a foreign futures or foreign options customer, except in accordance with the provisions of this part: Provided, that, with the exception of the disclosure and antifraud provisions set forth in §§ 30.6 and 30.9 of this part, the provisions of this part shall not apply to transactions executed on a foreign board of trade, and carried for or on behalf of a customer at a designated contract market, subject to an agreement with and rules of a contract market which permit positions in a commodity interest which have been established on one market to be liquidated on another market.

* * * * *

Issued in Washington, D.C. on December 5, 1995 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–30046 Filed 12–8–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM96–5–000]

Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act

November 29, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission is initiating an inquiry into the Commission's policy respecting the application of its jurisdiction under the Natural Gas Act and the Outer Continental Shelf Lands Act over natural gas facilities and services on the Outer Continental Shelf (OCS). The notice of inquiry is intended to receive information respecting the structure and operation of natural gas gathering and transportation on the OCS and the effects of the Commission's current policy. The notice of inquiry solicits comments on the legal and policy issues to be considered, in either maintaining or departing from the Commission's present policy, the operational considerations pertaining to OCS exploration and development activities, and pipeline systems that the Commission should take into account in its review of its current policy. The notice of inquiry invites all interested persons to participate in the inquiry and to submit answers to several specific questions.

DATES: Written comments must be received on or before January 12, 1996; an original and 14 copies should be filed.

ADDRESSES: All comments should refer to Docket No. RM96–5–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Robert Wolfe, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 208–2098.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission is initiating an inquiry into the Commission's policy respecting the application of its jurisdiction under the Natural Gas Act (NGA) and the Outer Continental Shelf Lands Act (OCSLA) over natural gas facilities and services on the Outer Continental Shelf (OCS).

The Commission is initiating this Notice of Inquiry (NOI) to examine the structure and operation of natural gas gathering and transportation on the OCS and the effects of the Commission's current policy. The NOI will also seek information on the legal and policy issues to be considered, in either maintaining or departing from the Commission's present policy, the operational considerations pertaining to OCS exploration and development activities, and pipeline systems that the Commission should take into account in its review of its current policy.

II. Background

The Commission's current policy respecting the jurisdictional status of gas pipelines and services on the OCS presents a number of issues concerning the status, scope, and effects of the Commission's regulation of gathering and transportation on the OCS. The Commission has determined that it should undertake a review of these issues.

Increases in successful offshore exploration and development activities, particularly in the Gulf of Mexico, have heightened the significance of these jurisdictional issues. Recently, several companies have either filed requests for, or have indicated their intent to request, exempt gathering status for offshore pipeline systems that each is eager to construct to bring gas onshore from significant newly developed deep water reserves in the Gulf. There are also pending requests for declaratory orders concerning existing certificated offshore systems.

There are 18 existing interstate pipelines on the Outer Continental Shelf (OCS) in the Gulf of Mexico that are presently subject to the Commission's regulation under the NGA. There are also numerous facilities that are not under NGA jurisdiction. These are principally producer-owned facilities. It is noteworthy that an estimated 27% of the lower 48 State's total dry gas production comes from the Gulf of Mexico OCS.[1]

The various OCS pipeline system proposals and Sea Robin Pipeline Company's request for rehearing of the Commission's June 16, 1995 order in Docket No. CP95–168–000[2] have prompted reexamination of the

[1] *See, Natural Gas Production for the Lower 48 States 1982 through 1993,* Energy Information Agency, March 1993.

[2] 71 FERC ¶ 61,351 (1995).

Commission's approach to regulating OCS facilities. Given the continuing importance of the OCS as a source of natural gas, a principal aim of the Commission is to develop regulatory policies that do not impede or distort developmental activities on the OCS.

III. The Statutory Framework

A. The Natural Gas Act (NGA)

The basic purpose of Congress in enacting the NGA was to ''occupy the field'' [3] of the regulation of natural gas moving in interstate commerce by the primary grant of jurisdiction to the Commission over those aspects of such regulation over which the states may not act.[4] To that end, Congress meant to create a comprehensive regulatory scheme of dual state and federal authority.[5] Section 1(b) of the NGA embodies the primary grant of jurisdiction to the Commission. At the same time, section 1(b) exempts from the Act's coverage ''the production or gathering of natural gas.'' Thus, section 1(b) first grants to the Commission broad plenary authority to regulate the business of transporting and of wholesaling natural gas moving in interstate commerce. Secondly, section 1(b), by operation of the ''production and gathering'' exemption, removes from that plenary grant of federal jurisdiction those aspects of natural gas regulation which are the proper subject of state regulation.[6]

B. The Outer Continental Shelf Lands Act (OCSLA)

Additional sources of regulatory authority over OCS pipeline facilities and activities are sections 5(e), and 5(f)(1), of the OCSLA.[7] Generally, sections 5(e) and 5(f)(1) of the OCSLA give the Commission certain responsibilities and authorizations to ensure that natural gas pipelines on the OCS transport for non-owner shippers in a nondiscriminatory manner and operate in accordance with certain competitive principles.

Section 5(e) of the OCSLA requires pipelines to transport natural gas produced from the OCS ''without discrimination'' and in such ''proportionate amounts'' as the Commission, in consultation with the Secretary of Energy, determines to be reasonable. In addition, section 5(f)(1) of the OCSLA requires pipelines transporting gas on or across the OCS to adhere to certain ''competitive principles''. These ''competitive principles'' include a requirement that the pipeline must provide ''open and nondiscriminatory access to both owner and nonowner shippers.''

The applicability of the provisions of sections 5(e) and 5(f)(1) is not restricted to interstate pipelines that are subject to the Commission's NGA jurisdiction. The only pipelines that may be exempt from the Commission's authority under the OCSLA are certain ''feeder lines,'' which are defined in section 5(f)(2) of the OCSLA [8] as a pipeline that feeds into a facility where oil and gas are ''first collected'' or a facility where oil and gas are ''first separated, dehydrated, or otherwise processed.'' These ''feeder lines'' may only be exempted from the requirements of the OCSLA by order of the Commission.

IV. The Commission's Current Policy

In 1989, in response to the court's decision in *EP Operating* v. *FERC (EP Operating)*,[9] which reversed a Commission determination that a 51-mile long, 16-inch diameter OCS pipeline was a jurisdictional transportation facility, the Commission set upon a review of its ''gathering policy.'' The purpose of that review was to assess the impact of *EP Operating* as well as the continuing viability and relevance of the ''primary function'' test, which at that time was the Commission's preferred methodology for determining the jurisdictional status of gas pipeline facilities.[10] That review culminated in the Commission's articulation and application of the ''modified primary function'' test in *Amerada Hess, et. al.* (*Amerada Hess*).[11]

As set out in *Amerada Hess,* the ''modified primary function'' test consists of the continued application of the ''primary function'' test, with a modification in its application in accord with *EP.* Specifically, when applying the *Farmland* criteria, the Commission stated that it would consider, especially for offshore facilities, the changing technical and geographic nature of exploration and production. The order explained that because of recent advances in engineering and available technology, offshore drilling operations were moving further offshore and further from existing interstate pipeline interconnections. Accordingly, the order explained that a relatively long pipeline on the OCS may be consistent with a primary function of gathering or production whereas an onshore pipeline of similar length would not. Therefore, in applying the ''modified primary function'' test to OCS pipeline facilities the Commission stated that it would apply, in effect, a sliding scale that would allow for the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the water depth of the offshore production area.

V. Specific Questions for Response by All Commenters

The Commission has compiled a list of questions, set forth below, that will be helpful in assessing the Commission's current policy and possible policy alternatives. This list is not meant to be all inclusive. Parties to this proceeding are invited to present alternative solutions not specifically referenced in this notice.

A. General.

1. It is necessary or appropriate to continue distinguishing between gathering and transportation on the OCS, or would it be better either to declare that under the NGA all such facilities are exempt gathering facilities or to declare that under the NGA all such facilities are jurisdictional transportation facilities?

2. Does the Commission need to continue to regulate offshore transportation under the NGA, or is reliance on the OCSLA sufficient to protect the public interest?

3. Is there a ''regulatory gap'' pertaining to rates or any other matter respecting gas pipeline facilities or services on the OCS?

4. What is the extent of the Commission's authority under the

[3] See Schneidwind v. ANR Pipeline Co., 485 U.S. 293, 310–311 (1988).

[4] Interstate Natural Gas Co. v. FPC, 331 U.S. 682 (1947).

[5] FPC v. Louisiana Power & Light Co., 406 U.S. 621 (1972).

[6] *See, e.g.,* Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, 682–84 (1954); Interstate Natural Gas Co. v. FPC, *supra* at 690.

[7] 43 U.S.C. § 1334(e), (f)(1).

[8] 43 U.S.C. § 1334(f)(2).

[9] 876 F. 2d 46 (Fifth Cir. 1989).

[10] The ''primary function'' test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983). In Farmland the Commission enumerated several physical and geographic criteria to be included in the analysis for determining whether the ''primary function'' of a facility is the transportation or the gathering of natural gas. These factors are: (1) the length and diameter of the line, (2) the extension of the facility beyond the central point in the field, (3) the line's geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. The ''primary function'' test has been found by the Commission to be applicable to both onshore and offshore facilities. The criteria set out in *Farmland* were not intended to be all inclusive. The Commission has also considered nonphysical criteria such as the intended purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and the Natural Gas Policy Act of 1978 (NGPA).

[11] 52 FERC ¶ 61,268 (1990).

OCSLA respecting rates for gas pipeline services?

5. Does the OCSLA provide sufficient remedial authority for the Commission to ensure nondiscriminatory access by prohibiting discriminatory or excessive rates?

6. Does the OCSLA provide the Commission with sufficient authority to protect the interests of historical customers of existing offshore interstate pipelines if these pipelines were declared to be gathering facilities?

7. Is it feasible, as a matter of law and policy, to adopt a light-handed regulatory approach that relies on complaints about discriminatory access or rates?

8. If such an approach is adopted, is there a need to distinguish between new and existing pipelines to determine how much regulation is necessary? What would be the legal and policy basis for any such distinction?

9. What are the implications of a change in OCS gathering policy on existing OCS interstate pipelines that may wish to retain their jurisdictional status or on existing, interstate pipeline-owned, OCS transmission facilities that wish to retain a transmission classification for those facilities?

10. How much, if any, OCS gas is processed at locations other than onshore or in shallow waters?

B. Should the Commission issue a rule under the NGA declaring all pipeline facilities on the OCS to be nonjurisdicational gathering facilities and simultaneously issue a rule under the OCSLA imposing terms and conditions on OCS facilities to protect existing shippers on existing OCS interstate pipelines or on existing OCS transmission facilities?

1. What would be the practical effect of these rules?

2. Does the Commission have sufficient authority under the OCSLA to prohibit, eliminate or alter rates that are clearly discriminatory or rates that are so high that they would have the effect of denying access to shippers?

3. What would be the impact of the Commission's ceasing to regulate any offshore pipeline rates under the ''just and reasonable'' standard of sections 4 and 5 of the NGA?

4. Is here a legal basis under the OCSLA for the Commission to regulate generally the level of rates for services performed by OCS pipelines?

5. What conditions could the Commission require under the NGA and/or the OCSLA to protect historical customers of currently regulated OCS pipelines if their facilities are declared to be exempt gathering facilities?

6. Under this option, should the Commission consider allowing all rate regulation to end at any point that a pipeline and a (non-affiliated) shipper agree? (This option would be similar to recent proposals for ''recourse rates''.[12])

C. Should the Commission issue a rule under the NGA declaring all pipeline facilities on the OCS to be jurisdictional transportation facilities, but only regulate transportation rates for historical customers on existing interstate pipelines and for non-owner shippers on new facilities?

1. What would be the practical effect of such a rule?

2. Does a ''regulatory gap'' exist on the OCS that would support the issuance of such a rule?

3. What legal support is there for the Commission's regulating only those pipelines that transport non-owner shipper gas?

4. Is there any need to regulate the rates charged new customers that have not relied upon or have no expectation of NGA regulation?

5. Would the provisions of the OSCLA provide sufficient protection from undue discrimination to both historical and new customers of OCS pipelines?

6. Under this option, should the Commission consider allowing all rate regulation to end at any point that a pipeline and a (non-affiliated) shipper agree? (This option would be similar to recent proposals for ''recourse rates''.[13])

D. Should the Commission continue the application of the ''modified primary function'' test on a case-by-case basis? What would be the effects of this approach?

VI. Procedure for Comments

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position on the issues raised in the NOI. Commenters are requested to identify the specific question posed by the NOI that their discussion addresses and to use appropriate headings. Additionally, commenters should double space their comments.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., Friday, January 12, 1996. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 and should refer to Docket No. RM96–5–000.

In addition, commenters are asked to submit their written comments and executive summaries on a 3 1/2-inch diskette formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need only be submitted in the format and version that it was generated (*i.e.* MS WORD, WordPerfect, ASC III, etc.) For Macintosh users, it would be helpful to save the documents in word processor format and then write them to files on a diskette formatted for MS-DOS machines.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30062 Filed 12–8–95; 8:45 am]

BILLING CODE 6717–01–M

[12] Under ''recourse rates'', pipelines would be free to offer negotiated rates. Customers could choose either negotiated rates or they could choose the pipeline's on-file, cost-of-service rates.

[13] *See* n. 13 *supra.*

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0003–95]

RIN 1545–AT92

Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations governing the source of income from sales of natural resources or other inventory produced in the United States and sold in a foreign country or produced in a foreign country and sold in the United States. This document affects persons who produce natural resources or other inventory in the United States and sell in a foreign country, or produce natural resources or other inventory in a foreign country and sell in the United States. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for April 10, 1996, at 10 a.m. must be received by March 11, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL–0003–95),

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:R (INTL–0003–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Anne Shelburne, (202) 622–3880; concerning submissions and the hearing, Ms. Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 9, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information requirements are in proposed §§ 1.863–1(b)(6) and 1.863–3(e)(2). This information is required by the IRS to monitor compliance with the federal tax rules for determining the source of income from the sale of natural resources or other inventory produced in the United States and sold in a foreign country or produced in a foreign country and sold in the United States. The likely respondents are taxpayers who produce natural resources or other inventory in the United States and sell in a foreign country, or who produce natural resources or other inventory in a foreign country and sell in the United States. Responses to this collection of information are required to properly determine the source of a taxpayer's income from such sales.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 1125 hours. The estimated annual burden per respondent varies from 1 hour to 5 hours, depending on individual circumstances, with an estimated average of 2.6 hours.

Estimated number of respondents: 425.

Estimated annual frequency of responses: One time per year.

Background

These proposed regulations contain rules relating to the source of income from the sale of certain natural resources and other inventory. These regulations are proposed to be effective for taxable years beginning 30 days after publication of final regulations. However, taxpayers may elect to apply these regulations for taxable years beginning after July 11, 1995.

Explanation of Provisions

I. Natural Resources

A. Current Regulations

Section 863 authorizes the Secretary to promulgate regulations allocating or apportioning to sources within or without the United States all items of gross income, expenses, losses, and deductions other than those items specified in sections 861(a) and 862(a).

Section 1.863–1 of the existing regulations contains rules for determining the source of income derived from the sale of certain natural resources. Generally, under paragraph (b)(1) of those regulations, income derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber located within the United States and from the sale by the producer of the products within or without the United States ordinarily must be included in gross income from sources within the United States. However, if a taxpayer can show to the satisfaction of the District Director that, due to peculiar conditions of production and sale or for other reasons, not all of the gross income derived therefrom should be allocated to sources within the United States, the source of the income generally is determined under the 50/50 method described in § 1.863–3(b)(2) *Example 2.* The regulations do not define ''peculiar conditions of production and sale.'' In addition, § 1.863–1(b)(2) permits the Commissioner to make an allocation or apportionment that more clearly reflects the proper source of a taxpayer's income, if the Commissioner determines that the application of paragraph (b)(1) does not result in the proper allocation or apportionment of income. Similar rules apply in the case of natural resources produced without the United States and sold within the United States. See § 1.863–6. Thus, income from the sale of such products ordinarily will be allocated entirely to foreign sources.

B. Issues Under Current Regulations

The IRS and Treasury have reexamined the existing regulations under section 863 regarding natural resources and arrived at several conclusions. First, certain ambiguities in existing § 1.863–1 should be clarified. For example, the regulation does not define the term ''peculiar conditions of production and sale,'' and there is virtually no authoritative guidance as to the scope of that term. To the extent that ''peculiar conditions of production and sale'' is defined narrowly, the regulation may lead to inappropriate results when determining the source of income from the sale of processed natural resources. For example, if a U.S. corporation harvests timber to manufacture furniture for export, all of its income may be from sources within the United States. However, if another U.S. corporation purchases cut timber to manufacture furniture for export from the United States, one-half of that taxpayer's income may be from sources without the United States under the 50/50 method.

Second, the interaction of the existing regulations and the recently-issued consolidated return regulations may cause inappropriate sourcing results. On July 11, 1995, the IRS and Treasury issued final regulations under § 1.1502–13 [TD 8597 (60 FR 36671)], treating members of a U.S. consolidated group as a single entity for purposes of determining the source of a taxpayer's income. The IRS and Treasury understand that inappropriate results may occur when the current section 863 regulations are applied to certain consolidated groups on a single entity basis. For example, a U.S. corporation that is a member of a consolidated group may extract oil abroad. The oil is then transported to the United States where it is refined by another member of the consolidated group. It is sold in the United States through other members of the consolidated group. Under § 1.1502–13 of the consolidated return rules, the consolidated group is treated as a single entity, and the source of income from the sale of oil must be determined under

section 863. Because the consolidated group refines the oil outside the country of extraction, it may be that peculiar conditions of production and sale exist, and the exclusive sourcing rules of paragraph (b)(1) do not apply. Thus, the taxpayer would generally determine the source of its income under the 50/50 method described in § 1.863–3(b)(2) *Example 2.* Under this method, 50 percent of the consolidated group's income would be U.S. source income based on the place of sale. However, this calculation may understate the appropriate amount of the taxpayer's foreign source income because the value of the oil as extracted may represent more than 50 percent of the total value of the product that is finally sold in the United States. The preamble to the regulations under § 1.1502–13 indicated that the IRS and Treasury would consider amending the regulations under section 863 to address these concerns.

Accordingly, the IRS and Treasury are issuing proposed regulations under section 863 to clarify ambiguities in the existing regulation and to address concerns created by the new § 1.1502–13 regulations.

C. Proposed Regulations

Section 1.863–1(b) provides special rules for determining the source of income from the sale of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber, within the United States and the sale of these products without the United States. The proposed regulations also provide special rules for determining the source of income from the sale of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber, without the United States and the sale of these products within the United States. The export terminal rule of paragraph (b)(1) provides that the source of gross receipts from the sale of such products equal to the fair market value of the product immediately prior to export (referred to in the proposed regulations as the export terminal) is determined according to where the farm, mine, oil or gas well, other natural deposit or timber is located. Separate rules are provided for determining the source of any gross receipts in excess of the fair market value of the product at the export terminal. Paragraph (b)(2) provides an exception to the approach of paragraph (b)(1) where, prior to export, the taxpayer engages in substantial production activities in addition to activities related to the ownership or operation of a farm, mine, oil or gas well, other natural deposit, or timber.

1. Export Terminal Rule

Under the export terminal rule of paragraph (b)(1), gross receipts derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber, and sale of the products derived therefrom, are allocated between sources within and without the United States based on the fair market value of the product at the export terminal. The export terminal is the last point from which the product is sent from the United States to a foreign country or the last point from which goods are sent from a foreign country to the United States. For example, if a U.S. corporation extracts oil in one foreign country, sends the crude oil to a port in a second foreign country via pipeline, and delivers the oil to a U.S. refinery by ship, the export terminal would be the port in the second foreign country where the crude oil was loaded onto the ship.

Under the export terminal rule, the source of gross receipts equal to the fair market value of the product at the export terminal is determined by the location of the farm, mine, well, deposit, or uncut timber. The source of gross receipts in excess of the fair market value of the product at the export terminal (excess gross receipts) is determined according to whether the taxpayer engages in any additional production activity following export. A taxpayer will be treated as performing production activities in addition to the activities of owning or operating a farm, mine, oil or gas well, other natural deposit, or timber based on the principles of § 1.954–3(a)(4). However, activities that prepare the natural resource itself for export, including those that are designed to facilitate the transportation of the natural resource to or from the export terminal, will not be considered additional production activities. Thus, § 1.863–1 *Example 2* illustrates that liquefaction of natural gas would not constitute additional production activities. In addition, activities such as delimbing and debarking trees, sorting grain, and treating and stabilizing oil would ordinarily not constitute additional production activities. In contrast, the transformation of timber into furniture is not done to prepare the natural resource itself for export, and would constitute additional production activity. Production activities are defined in § 1.863–1(b)(3)(i).

If no additional production occurs following export, paragraph (b)(1)(i) requires that the source of the excess gross receipts be determined according to where the farm, mine, well, deposit, or uncut timber is located.

However, under paragraph (b)(1)(ii), if the taxpayer engages in additional production activities after the export terminal and outside the country of sale, the source of excess gross receipts is determined under the rules of § 1.863–3. For example, if a U.S. corporation extracts oil in a foreign country, refines the oil in the United States, and sells the refined product in another foreign country, the source of gross receipts in excess of the fair market value of the product when it is exported from the first foreign country must be determined under one of the three methods described in § 1.863–3 (i.e., the 50/50 method as described in § 1.863–3(b)(1), the IFP method described in § 1.863–3(b)(2), or, if permitted by the District Director, the books and records method as described in § 1.863–3(b)(3)).

In any case not described in either paragraph (b)(1) (i) or (ii) of the proposed regulations, the source of the excess gross receipts is determined according to the place of sale pursuant to paragraph (b)(1)(iii). This rule would apply, for example, in the case where the taxpayer engages in additional production activities in the country of sale.

Paragraph (b)(1) addresses the concerns of U.S. corporations involved in the production of natural resources abroad and the application of the new § 1.1502–13 consolidated return regulations, by allowing them to treat the value of the natural resources at the point of export as income from sources where the farm, mine, well, deposit, or uncut timber is located. This rule has no effect on the rules governing foreign oil and gas extraction income under section 907(c)(1).

On November 28, 1995, the Tenth Circuit affirmed the Tax Court decision in *Phillips Petroleum* v. *Comm'r,* 97 T.C. 30 (1991), which held existing § 1.863–1(b)(1) invalid to the extent it allocates income from the sale of U.S. natural resources solely to sources within the United States. *Phillips Petroleum* v. *Comm'r,* No. 94–9021 (10th Cir. Nov. 28, 1995). The IRS and Treasury will consider the implications of this decision when finalizing these proposed regulations.

2. Additional Production Prior to Export Terminal

Paragraph (b)(2) provides a special rule for determining the source of income where a taxpayer performs substantial additional production activities before the product leaves the export terminal. Under paragraph (b)(2),

the source of gross receipts equal to the fair market value of the product prior to the additional production activities is based on the location of the farm, mine, well, deposit, or uncut timber. The source of gross receipts in excess of the fair market value of the products at the beginning of the additional production activities is determined under the rules of § 1.863–3.

3. Other Rules

The proposed regulation contains rules for determining the fair market value of relevant products. For this purpose, fair market value depends on all of the facts and circumstances as they exist relative to a party in any particular case. Thus, these rules for determining fair market value are consistent with the foreign oil and gas rules contained in § 1.907(c)–1(b)(6). In addition, fair market value determinations must be consistent with prices charged in sales, if any, to related parties in a transaction that is subject to section 482. For example, if a member of a U.S. consolidated group extracts natural resources in a foreign country and sells the natural resources to another member of the same group at the export terminal, the value of the natural resources determined at the export terminal should be the price charged by the producing member to the purchasing member for purposes of section 482.

Under paragraph (b)(5), a taxpayer's gross income from sources within or without the United States is determined by reducing its gross receipts from sources within or without the United States by the cost of goods sold properly attributable to such gross receipts. Under paragraph (c), a taxpayer's taxable income from U.S. or foreign sources must be determined under the rules of §§ 1.861–8 through 1.861–14T.

Under paragraph (b)(6), taxpayers must fully explain the methodology used, the facts describing substantial additional production activities (if any), and the determination of fair market value in a statement attached to the taxpayer's return. In addition, taxpayers must provide such other information as is required by § 1.863–3(e)(2).

Taxpayers may elect to apply the rules of these regulations for taxable years beginning after July 11, 1995. Otherwise, these regulations are effective for taxable years beginning 30 days after the publication of this regulation as a final regulation.

II. Inventory Other Than Natural Resources

A. Current Regulations

Section 863 authorizes the Secretary to promulgate regulations allocating or apportioning to sources within or without the United States all items of gross income, expenses, losses, and deductions other than those specified in sections 861(a) and 862(a).

Section 1.863–3 of the current regulations governs the source of income from the sale of inventory produced (in whole or in part) in the United States and sold in a foreign country, or produced (in whole or in part) in a foreign country and sold in the United States (Section 863 Sales). Section 1.863–3 provides three methods, set forth in the form of three examples, to determine the source of income from Section 863 Sales.

§ 1.861–3(b)(2) *Example 1* of the current regulations illustrates how an independent factory or production price (IFP) applies to determine the income attributable to production (IFP method). An IFP generally is established if a taxpayer regularly sells part of its output to wholly independent distributors in such a way as to reasonably reflect the income attributable to production activity. If an IFP exists, taxpayers must use the IFP method to determine the income attributable to production activities in both the sale establishing the IFP and in sales of similar products. See *Phillips Petroleum* v. *Comm'r,* 97 T.C. 30 (1991), *aff'd,* No. 94–9021 (10th Cir. Nov. 28, 1995); Rev. Rul. 88–73 (1988–2 C.B. 173). Gross receipts in excess of the IFP are attributable to sales activity. Taxpayers can otherwise establish an IFP by showing to the satisfaction of the District Director that an IFP exists. Notice 89–10 (1989–1 C.B. 631) contains additional rules regarding the application of the IFP method. Section 1.863–3(b)(2) *Example 1* of the current regulations does not provide explicit guidance as to how to determine the source of income attributable to production activities under the IFP method. However, the source of income attributable to sales activities is based generally on where title to the inventory passes to the purchaser as defined in § 1.861–7(c).

Section 1.863–3(b)(2) *Example 2* of the current regulations divides a taxpayer's income from Section 863 Sales equally between production activity and sales activity (50/50 method). The source of income attributable to production activity is based on the location of the taxpayer's property. The portion of this production income attributable to sources within the United States is determined by a fraction, the numerator of which is the taxpayer's property located within the United States used to produce income from Section 863 Sales, and the denominator of which is the taxpayer's property both within the United States and within a foreign country used to produce income from Section 863 Sales. The source of the taxpayer's income attributable to sales activity is based on where title to the inventory passes to the purchaser as defined in § 1.861–7(c).

Section 1.863–3(b)(2) *Example 3* of the current regulations allows a taxpayer to request permission from the District Director to use the taxpayer's books and records to allocate income to sources within and without the United States if those books reflect more clearly than the other methods the taxable income derived from sources within the United States (books and records method).

B. Issues Under Current Regulations

On July 12, 1995, the IRS and Treasury issued regulations under § 1.1502–13, treating members of a consolidated group as a single entity for purposes of determining the source of a taxpayer's income. The IRS and Treasury understand that the current section 863 regulations may raise questions when applied to certain consolidated groups on a single entity basis. The preamble to the regulations under § 1.1502–13 indicated that the IRS and Treasury would reevaluate part of the regulations under section 863. As part of this process, the IRS and Treasury also have reexamined the remainder of the existing section 863 regulations and have concluded that several additional changes are necessary.

First, the existing regulations were drafted more than 70 years ago, and have not been amended to reflect the evolution of business practices. As a result, the regulations have been the source of controversies in recent years. See *Intel Corporation* v. *Comm'r,* 100 T.C. 39 (1993), *aff'd,* No. 94–70105 (9th Cir. Oct. 16, 1995); *Phillips Petroleum* v. *Comm'r,* 97 T.C. 30 (1991), 101 T.C. 78, 104 (1993) (''there have been no cases interpreting [the 50/50 method] and no administrative pronouncements regarding its application since the regulation was promulgated in 1922 except for necessary inferences to be drawn from *Intel* * * *''), *aff'd,* No. 94–9021 (10th Cir. Nov. 28, 1995). In part, these controversies may be due to the structure of the current regulations, which do not contain operative rules to describe the methods of allocating and

apportioning income, but instead rely on examples.

Second, the existing regulations raise important administrative concerns. For example, the IFP method requires an analysis of each of the taxpayer's sales transactions to identify an IFP. If one or more IFPs are so identified, a second analysis is required of each of the taxpayer's sales transactions to identify which transactions are similar to the IFP sale. In some cases, this process may require a review of a multitude of transactions. The IFP method may, therefore, be difficult for both taxpayers and the government to apply. The existing 50/50 method also presents administrative concerns. For example, the 50/50 method may require the taxpayer to determine the fair market value of each of its assets at the end of every tax year. Taxpayers have often commented to the IRS about the difficulties of determining the fair market value of their assets.

Third, the existing regulations result in disparate treatment of similarly situated taxpayers. Although an IFP must be used under current rules if one exists, the mandate applies only to taxpayers selling inventory to certain independent distributors. Taxpayers selling exclusively to related parties are not required to use the IFP method since the IRS may not establish an IFP based on such sales. Instead, these taxpayers use the 50/50 method to source their income from export sales. Thus, taxpayers selling inventory exclusively to related parties may be deemed to generate far more foreign source income than taxpayers selling a portion of their inventory to independent distributors, even though the two taxpayers may perform the same functions. The IRS and Treasury believe that this differing treatment of similarly situated taxpayers is not justified.

Fourth, the existing 50/50 method can result in apportionment of income that is inconsistent with the common understanding of that method. The 50/50 method is generally characterized as a method that would source export sales income one-half in the United States and one-half in a foreign country. For example, in 1984 the Treasury Department stated: ''Generally, [income derived from manufacture and sale of property] is allocated one-half on the basis of the place of manufacture and half on the basis of the place of sale * * *'' Treasury Department, Tax Reform for Fairness, Simplicity, and Economic Growth, Nov. 1984 at 364. In addition, Congress understands the 50/50 method to operate in this fashion. In 1986, the House, Senate and Conference Committees each stated: ''[Under the existing 50/50 method], half of such income generally is sourced in the country of manufacture, and half of the income is sourced on the basis of the place of sale''. House Rep. No. 426, 99th Cong. 1st Sess. 359 (1985); S. Rep. No. 313, 99th Cong. 2d Sess. 329 (1986); H.R. Conf. Rep. No. 841, 99th Cong. 2d Sess. II–595 (1986). The staff of the Joint Committee on Taxation has referred to the 50/50 method as the ''production/marketing split'' and stated that under this method ''50 percent of such income generally is attributed to the place of production * * *'' Staff of the Joint Comm. on Taxation, Factors Affecting International Competitiveness of the United States 148 (1991).

The existing regulations may, however, allow taxpayers to use the 50/50 method to obtain results that are inconsistent with this common understanding. Under the existing regulations, 50 percent of the income is treated as sales income and sourced on the basis of title passage. The remaining 50 percent is treated as production income and sourced based on the location of assets. This half of the formula is not necessarily, however, limited to production assets. For example, goodwill and accounts receivables are counted as assets in allocating production income. The inclusion of sales assets in the formula allocating production income results in additional income being allocated to sales activities. The contribution of the sales assets to sales income should be reflected only in the 50 percent of the income that is allocated to sales and sourced under title passage. Thus, the production income formula should only take into account assets directly involved in the production of inventory.

B. Proposed Regulations

1. Overview

Section 1.863–3 provides rules for allocating and apportioning income from Section 863 Sales. Generally, § 1.863–3(b) provides three methods for determining the amount of gross income attributable to production activity and the amount of gross income attributable to sales activity. The source of gross income attributable to each activity is then determined under the rules of paragraph (c). Paragraph (d) provides rules to determine the source of taxable income. Reporting and election rules are set forth under paragraph (e) of the proposed regulations. The proposed regulations reserve on paragraph (f) (prior paragraph (c)), dealing with income partly from sources within a possession of the United States. The IRS and Treasury solicit comments from taxpayers regarding changes that should be made to new paragraph (f) (if any) to conform to the other changes in § 1.863–3.

The proposed regulations generally apply an aggregate approach in taking into account a taxpayer's interest in a partnership. The IRS and Treasury solicit comments on the appropriate treatment of partnerships, including whether there should be special rules for limited partnerships, de minimis interests in partnerships, and tiered partnerships.

2. Methods To Determine Gross Income Attributable to Production Activity and Sales Activity

Section 1.863–3 generally retains the three methods of the current regulations for splitting income between production and sales activity, with several modifications.

a. 50/50 Method

The proposed regulations do not change the allocation of half of the taxpayer's income from Section 863 Sales to production activity and half to sales activity. As described below, the proposed regulations modify and clarify the determination of the location of assets. In addition, paragraph (b)(1) of the proposed regulations makes the 50/50 method the general rule to determine the amount of income attributable to production and sales activities. The taxpayer, however, may elect to apply the IFP method, described in paragraph (b)(2), or, with the consent of the District Director, the books and records method, described in paragraph (b)(3).

b. IFP Method

By making the IFP method elective, the proposed regulations significantly reduce administrative burdens related to its application and eliminate any bias against taxpayers choosing to export through independent distributors.

Under the proposed regulations, the taxpayer may elect to apply the IFP method if it is able to establish an IFP. As in the current regulations, an IFP is fairly established by actual sales of the taxpayer if the taxpayer regularly sells part of its output to wholly independent distributors or other selling concerns in such a way as to reasonably reflect the income attributable to production activity. Once the IFP is established, it can be used to determine the amount of income attributable to production activity in other Section 863 Sales if the inventory sold in the other sales is substantially similar in physical characteristics and function, and is sold at a similar level of distribution as the

inventory sold in a sale establishing an IFP. A sale will not be considered to establish an IFP if sales activity for the relevant product is significant in relation to all of the activities for that product. The IRS and Treasury intend to supersede Notice 89–10 upon publication of final regulations.

The proposed regulations would also eliminate the existing rule permitting taxpayers to otherwise establish an IFP by showing to the satisfaction of the District Director that a sale reasonably reflecting the income attributable to production exists. This ''otherwise established'' IFP is rarely, if ever, used. American Law Institute, International Aspects of United States Income Taxation 31 (1987). The IRS and Treasury solicit comments from taxpayers on the continued utility of the otherwise established IFP.

The proposed regulations omit the reference in the existing regulation to a sales branch. A taxpayer may elect to use the IFP method even if it does not maintain a sales branch in a foreign country.

c. Books and Records Method

The proposed regulations retain the books and records method of the existing regulations, permitting taxpayers to request permission from the District Director to use their books and records to determine the income attributable to production and sales activities. The District Director will consider a taxpayer's request if the taxpayer maintains a detailed allocation of receipts and expenditures, clearly reflecting the amount of income from production and sales activities.

The books and records method is rarely, if ever, used. American Law Institute, International Aspects of United States Income Taxation, 31 (1987). The IRS and Treasury solicit comments from taxpayers on the continued utility of the books and records method, or whether the books and records method should be replaced by another method of economic sourcing.

3. Determination of Source of Gross Income

Unlike the current regulations which provide specific rules for determining the source of income attributable to production activity and sales activity only for purposes of the 50/50 method, the proposed regulations adopt rules applicable to each of the three methods. Under the proposed regulations, once gross income attributable to production activity and sales activity has been determined under one of the methods described in paragraph (b), the source of the income is determined separately for each type of income under paragraph (c). The source of gross income attributable to production activity is determined under paragraph (c)(1), based on the location of production assets, and the source of gross income attributable to sales activity is determined under paragraph (c)(2) based on the location of the sale.

a. Source of Gross Income Attributable to Production Activity

The proposed regulations generally adopt the approach set forth in the current regulations under the 50/50 method, but with modifications and clarifications.

Under § 1.863–3(c)(1), the source of income attributable to production activity is determined based on the location of the taxpayer's production assets. Thus, if a taxpayer manufactures inventory exclusively in the United States, all of its income attributable to production activity will be considered from sources within the United States. The rules described below are intended to apply only to taxpayers that produce inventory both within and without the United States.

Under the proposed regulations, the source of a taxpayer's income from production activities is determined by reference to the taxpayer's production assets, instead of all of its assets that produce income from Section 863 Sales. The IRS and Treasury believe that this change is appropriate to ensure that the source of production income corresponds to the location of production activity. Production assets are defined to include tangible and intangible property owned by the taxpayer that are used to produce inventory sold in Section 863 Sales. Any property not directly used to produce inventory is excluded. Thus, accounts receivable and marketing intangibles are excluded because they are sales assets and not production assets. Other assets excluded because they do not directly produce inventory are transportation assets, warehouses, inventory, work-in-process, raw materials, cash, investment assets, and stock of a subsidiary. Working capital is excluded to avoid uncertainty arising from determinations of the appropriate amount of working capital. In addition, working capital would generally be apportioned pro rata in accordance with a taxpayer's production assets. As under the current regulations, leased assets are excluded; only assets owned by the taxpayer are included.

The proposed regulations also provide specific rules for determining where a production asset is located. Tangible assets are located where the assets are used by the taxpayer. Intangible Assets are located where the tangible production assets to which they relate are located.

Where production takes place both within the United States and within a foreign country, the regulations apply a property fraction to apportion production income between U.S. and foreign sources. The taxpayer's foreign source gross production income is determined by multiplying its gross production income by a fraction, the numerator of which is the taxpayer's production assets located within a foreign country, and the denominator of which is the taxpayer's production assets located both within the united States and within a foreign country.

The current regulations generally include assets in the property formula at fair market value. The proposed regulations modify this rule to provide that an asset must be included in the property formula at its average adjusted basis (see section 1011). The IRS and Treasury believe that this change to adjusted basis will significantly simplify the application of this formula for both taxpayers and the IRS.

The proposed regulations also contain more detailed guidance than the current regulations for determining the amounts to be included in the property fraction. For example, the proposed regulations would require that if the asset is used to produce inventory sold in Section 863 Sales and is also used to produce other property, the basis of the asset must be prorated to account for such other uses.

The purpose of the property formula is to attribute the source of the taxpayer's production income to the location of its production activity. The IRS and Treasury are concerned that taxpayers may be able to affect the location of assets without changing the sit us of economic activity. Accordingly, comments are solicited about whether there should be rules to prevent manipulation of this formula in a manner inconsistent with the purpose of the regulation.

b. Source of Gross Income Attributable to Sales Activity

The source of gross income that is attributable to sales activity is determined under paragraph (c)(2). As under the current regulations, the source of this income is generally based on where a sale takes place. See § 1.861–7(c). Accordingly, if a U.S. producer sells its goods in a foreign country, the income attributable to sales activity is generally foreign source income.

The proposed regulation would retain the language of the existing regulation, which only applies to sales that occur within a foreign country. The IRS and Treasury solicit comments as to whether the regulations should be expanded to apply to sales made in international waters or in space. The IRS and Treasury are concerned, however, that if such a change were made, a U.S. seller may try to use the 50/50 method by selling inventory in international waters to U.S. purchasers, even when the goods were destined for the United States. In view of these concerns, the IRS and Treasury also solicit comments as to whether the regulations should provide an exception to the title passage rule in the case of sales of goods produced in the United States and destined for use in the United States.

4. Determination of Source of Taxable Income

Once the amount and source of gross income are determined under paragraph (c), taxpayers then determine the source of their taxable income. Under proposed paragraph (d), taxpayers must allocate or apportion under §§ 1.861–8 through 1.861–14T the amounts of expenses, losses and other deductions to its gross income determined under each method described in paragraph (b). In the case of amounts of expenses, losses and other deductions allocated or apportioned to gross income determined under the IFP method or the books and records method, the taxpayer must apply the rules of §§ 1.861–8 through 1.861–14T to allocate or apportion these amounts between gross income from sources within and without the United States. For amounts of expenses, losses and other deductions allocated or apportioned to gross income determined under the 50/50 method, taxpayers must apportion expenses and other deductions prorata based on the relative amounts of U.S. and foreign source gross income. These rules are consistent with existing regulations.

5. Election and Reporting Rules

Under paragraph (e) of the proposed regulations, a taxpayer must use the 50/50 method unless the taxpayer elects to use the IFP method, or elects the Books and Records method. The taxpayer makes the election by using the method on its tax return. Once The tax return is filed, the election is not revokable for that year. In addition, that method must be used in later taxable years unless the Commissioner or her delegate consents to a change. Permission to change methods in later years will not be withheld unless the change would result in a substantial distortion of the source of income.

A taxpayer must fully explain the methodology used in paragraph (b), and the amount of income allocated or apportioned to U.S. and foreign sources in a statement attached to its tax return.

6. Conforming Changes

The proposed regulations make conforming changes to § 1.863–2 of the regulations. Under § 1.863–2, the taxpayer may elect to apply the 50/50 method to its net taxable income, instead of its gross income as specified in § 1.863–3. The proposed regulations clarify that income derived from the purchase of personal property within a possession of the United States and its sale within the United States is subject to these regulations only to the extent it is not excluded by § 1.936–6(a)(5), Q&A 7. Other changes to § 1.863–2 were intended to conform the language of the regulation to the changes in § 1.863–3.

Finally, the IRS and Treasury will reconsider the existing regulations issued under section 863 regarding transportation services and cable and telegraph services in light of the Tax Reform Act of 1986. Accordingly, the transportation rules contained in § 1.863–4 will only apply to services that are not described in section 863(c) and the telegraph and cable rules contained in § 1.863–5 are deleted. No inference is intended as to whether portions of the existing regulations continued to apply after the Tax Reform Act of 1986.

7. Proposed Effective Dates

These regulations are effective for taxable years beginning 30 days after publication of final regulations. However, taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and before 30 days after publication of these regulations as final regulations.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, 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 (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 10, 1996, at 10 a.m. in the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue 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 and an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 11, 1996.

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 author of these regulations is Anne Shelburne, Office of Associate Chief Counsel (International). 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.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.863–1 also issued under 26 U.S.C. 863.

Section 1.863–2 also issued under 26 U.S.C. 863.

Section 1.863–3 also issued under 26 U.S.C. 863.

Section 1.863–4 also issued under 26 U.S.C. 863.

Section 1.863–6 also issued under 26 U.S.C. 863. * * *

Par. 2. Sections 1.863–0 is added to read as follows:

§ 1.863–0 Table of contents.

This section lists captions contained in §§ 1.863–1, 1.863–2, and 1.863–3.

§ 1.863–1 Allocation of Gross Income.

(a) In general.
(b) Natural resources.
(1) In general.
(2) Additional production prior to export terminal.
(3) Definitions.
(i) Production activity.
(ii) Additional production activities.
(iii) Export terminal.
(4) Determination of fair market value.
(5) Determination of gross income.
(6) Tax return disclosure.
(7) Examples.
(c) Determination of taxable income.
(d) Effective dates.

§ 1.863–2 Allocation and Apportionment of Taxable Income.

(a) Determination of taxable income.
(b) Determination of source of taxable income.
(c) Effective dates.

§ 1.863–3 Allocation and Apportionment of Income from Certain Sales of Inventory.

(a) In general.
(b) Methods to determine income attributable to production activity and sales activity.
(1) 50/50 method.
(i) Determination of gross income.
(ii) Example.
(2) IFP method.
(i) Establishing an IFP.
(ii) Applying the IFP method.
(iii) Determination of gross income.
(iv) Examples.
(3) Books and records method.
(c) Determination of the source of gross income from production activity and sales activity.
(1) Income attributable to production activity.
(i) Production only within the United States or only within foreign countries.
(A) Source of income.
(B) Definition of production assets.
(C) Location of production assets.
(ii) Production both within the United States and within foreign countries.
(A) Source of income.
(B) Adjusted basis of production assets.
(iii)Examples.
(2) Income attributable to sales activity.
(d) Determination of source of taxable income.
(e) Election and reporting rules.
(1) Elections under paragraph (b) of this section.
(2) Disclosure on tax return.
(f) Income partly from sources within a possession of the United States. [Reserved]
(g) Effective dates.

Par. 3. Sections 1.863–1, 1.863–2, and 1.863–3 are revised to read as follows:

§ 1.863–1 Allocation of gross income.

(a) *In general.* Items of gross income other than those specified in section 861(a) and section 862(a) will generally be separately allocated to sources within or without the United States. See § 1.863–2 for alternate methods to determine the income from sources within or without the United States in the case of items specified in § 1.863–2(a). See also sections 865(b) and 865(e)(2).

(b) *Natural resources*—(1) *In general.* Except to the extent provided in paragraph (b)(2) of this section, gross receipts from the sale outside the United States of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber within the United States, are allocated between sources within or without the United States based on the fair market value of the product at the export terminal (as defined in paragraph (b)(3)(iii) of this section). Except to the extent provided in paragraph (b)(2) of this section, gross receipts from the sale within the United States of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber outside the United States are also allocated between sources within or without the United States based on the fair market value of the product at the export terminal. The source of gross receipts equal to the fair market value of the product at the export terminal will be from sources where the farm, mine, well, deposit, or uncut timber is located. The source of gross receipts from the sale of the product in excess of its fair market value at the export terminal (excess gross receipts) will be determined as follows—

(i) If the taxpayer does not engage in additional production activities (as defined in paragraph (b)(3)(ii) of this section), excess gross receipts will be from sources where the farm, mine, well, deposit, or uncut timber is located;

(ii) If the taxpayer engages in additional production activities subsequent to shipment from the export terminal and outside the country of sale, the source of excess gross receipts must be determined under § 1.863–3. For purposes of applying § 1.863–3, only production assets used in additional production activity subsequent to the export terminal are taken into account; or

(iii) In all other cases, excess gross receipts will be from sources within the country of sale, as described in § 1.861–7(c). This paragraph (b)(1)(iii) applies, for example, to a taxpayer that engages in additional production activities in the country of sale.

(2) *Additional production prior to export terminal.* Notwithstanding any other provision of this section, gross receipts from the sale of products derived by a taxpayer who performs additional production activities as defined in paragraph (b)(3)(ii) of this section before the relevant product is shipped from the export terminal are allocated between sources within and without the United States based on the fair market value of the product immediately prior to the additional production activities. The source of gross receipts equal to the fair market value of the product immediately prior to the additional production activities will be from sources where the farm, mine, well, deposit, or uncut timber is located. The source of gross receipts from the sale of the product in excess of the fair market value immediately prior to the additional production activities must be determined under § 1.863–3. For purposes of applying § 1.863–3, only production assets used in the additional production activities are taken into account.

(3) *Definitions*—(i) *Production activity*. For purposes of this section, *production activity* means an activity that creates, fabricates, manufactures, extracts, processes, cures, or ages inventory. See § 1.864–1.

(ii) *Additional production activities.* For purposes of this section, *additional production activities* are substantial production activities performed by the taxpayer in addition to activities from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber. Whether a taxpayer performs such additional production activities will be determined under the principles of § 1.954–3(a)(4). However, in no case will activities that prepare the natural resource itself for export, including those that are designed to facilitate the transportation of the natural resource to or from the export terminal, be considered additional production activities for purposes of this section.

(iii) *Export terminal.* Where the farm, mine, well, deposit, or uncut timber is located without the United States, the export terminal will be the final point in a foreign country from which goods are shipped from a foreign country to the United States. Where the farm, mine, well, deposit, or uncut timber is located within the United States, the export terminal will be the final point in the United States from which goods are shipped from the United States to a foreign country. The export terminal is determined without regard to any contractual terms agreed to by the taxpayer and without regard to whether there is an actual sale of the products at the export terminal.

(4) *Determination of fair market value.* For purposes of this section, fair market value depends on all of the facts and circumstances as they exist relative to a party in any particular case. Where the products are sold to a related party in a transaction subject to section 482, the determination of fair market value under this section must be consistent with the arm's length price determined under section 482.

(5) *Determination of gross income.* To determine the amount of a taxpayer's gross income from sources within or without the United States, the taxpayer's gross receipts from sources within or without the United States determined under this paragraph (b) must be reduced by the cost of goods sold properly attributable to gross receipts from sources within or without the United States.

(6) *Tax return disclosure.* A taxpayer that determines the source of its income under this paragraph (b) shall attach a statement to its return explaining the methodology used to determine fair market value under paragraph (b)(4) of this section, and explaining any additional production activities (as defined in paragraph (b)(3)(ii) of this section) performed by the taxpayer. In addition, the taxpayer must provide such other information as is required by § 1.863–3.

(7) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. No additional production. US Mines, a U.S. corporation, extracts coal in the United States and, without substantial additional production, sells the coal in a foreign country. Under § 1.863–1(b) and (b)(1)(i), all of US Mines' income will be from sources within the United States.

Example 2. Scope of additional production. US Gas, a U.S. corporation, extracts natural gas within the United States, and transports the natural gas to a U.S. port where it is liquified in preparation for shipment. The liquified natural gas is then transported via freighter and sold without additional production activities in a foreign country. Liquefaction of natural gas is not an additional production activity because liquefaction prepares the natural gas for transportation from the export terminal. Therefore, under § 1.863–1(b) and (b)(1)(i), all of US Gas' income will be from sources within the United States.

Example 3. Sale in third country. US Gold, a U.S. corporation, mines gold in country X, produces gold jewelry in the United States, and sells the jewelry in country Y. Assume that the fair market value of the gold at the export terminal in country X is $40, and that US Gold ultimately sells the gold jewelry in country Y for $100. Under § 1.863–1(b), $40 of US Gold's gross receipts will be allocated to sources without the United States. Under § 1.863–1(b)(1)(ii), the source of the remaining $60 of gross receipts will be determined under § 1.863–3. If US Gold applies the 50/50 method described in § 1.863–3, $20 of cost of goods sold is properly attributable to activities subsequent to the export terminal, and all of US Gold's production assets subsequent to the export terminal are located in the United States, then $20 of gross income will be allocated to sources within the United States and $20 of gross income will be allocated to sources without the United States.

Example 4. Production in country of sale. US Oil, a U.S. corporation, extracts oil in country X, transports the oil via pipeline to the export terminal in country Y, refines the oil in the United States, and sells the refined product in the United States to unrelated persons. Assume that the fair market value of the oil at the export terminal in country Y is $80, and that US Oil ultimately sells the refined product for $100. Under § 1.863–1(b)(1), $80 of US Oil's gross receipts will be allocated to sources without the United States, and under § 1.863–1(b)(1)(iii) the remaining $20 of gross receipts will be allocated to sources within the United States.

Example 5. Additional production prior to export. US Furniture, a U.S. corporation, cuts trees in the United States, converts the trees into lumber, uses the lumber to manufacture furniture in the United States, and sells the furniture in another country. Assume that the fair market value of the trees when the conversion into lumber begins is $40, and that US Furniture ultimately sells the furniture for $100. Because the conversion of the trees into lumber is an additional production activity within the United States within the meaning of § 1.863–1(b)(3)(ii), the source of US Furniture's income will be determined under § 1.863–1(b)(2). Thus, $40 of US Furniture's gross receipts will be allocated to sources within the United States. The source of the remaining $60 of gross receipts will be determined under § 1.863–3. If US Furniture applies the 50/50 method described in § 1.863–3(b)(1), $20 of cost of goods sold is properly attributable to the additional production activity, and all of US Furniture's production assets used in the additional production activity are located in the United States, then $20 of gross income will be allocated to sources within the United States and $20 of gross income will be allocated to sources without the United States.

(c) *Determination of taxable income.* The taxpayer's taxable income from sources within or without the United States will be determined under the rules of §§ 1.861–8 through 1.861–14T for determining taxable income from sources within the United States.

(d) *Effective dates.* The rules of this section will apply to taxable years beginning 30 days after publication of these regulations as final regulations. However, taxpayers may apply the rules of this section for taxable years beginning after July 11, 1995, and before 30 days after publication of these regulations as final regulations. For years beginning before 30 days after publication of these regulations as final regulations, see § 1.863–1 (as contained in 26 CFR part 1 revised as of April 1, 1995).

§ 1.863–2 Allocation and apportionment of taxable income.

(a) *Determination of taxable income.* Section 863(b) provides an alternate method for determining taxable income from sources within the United States in the case of gross income derived from sources partly within and partly without the United States. Under this method, taxable income is determined by deducting from such gross income the expenses, losses, or other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions that cannot definitely be allocated to some item or class of gross income. The income to which this section applies (and that is treated as derived partly from sources within and partly from sources without the United States) will consist of gains, profits, and income—

(1) From certain transportation or other services rendered partly within and partly without the United States to the extent not within the scope of section 863(c) or other specific provisions of this title;

(2) From the sale of inventory property (within the meaning of section 865(i)) produced (in whole or in part) by the taxpayer in the United States and sold in a foreign country or produced (in whole or in part) by the taxpayer in a foreign country and sold in the United States; or

(3) Derived from the purchase of personal property within a possession of the United States and its sale within the United States, to the extent not excluded from the scope of these regulations under § 1.936–6(a)(5), Q&A 7.

(b) *Determination of source of taxable income.* Income treated as derived from sources partly within and partly without the United States under paragraph (a) of this section may be allocated to sources within and without the United States pursuant to § 1.863–1 or apportioned to such sources in accordance with the methods described in other regulations under section 863. To determine the source of certain types of income described in paragraph (a)(1) of this section, see § 1.863–4. To determine the source of gross income described in paragraph (a)(2) of this section, see § 1.863–3. However, the principles of § 1.863–3 (b)(1) and (c) may be applied to determine the source of taxable income from sales of inventory property. To determine the source of income described in paragraph (a)(3) of this section, see § 1.863–3(f).

(c) *Effective dates.* This section will apply to taxable years beginning 30 days after publication of these regulations as final regulations. However, taxpayers may apply the rules of this section for taxable years beginning after July 11, 1995, and before 30 days after publication of these regulations as final regulations. For years beginning before 30 days after publication of these regulations as final regulations, see § 1.863–2 (as contained in 26 CFR part 1 revised as of April 1, 1995).

§ 1.863–3 Allocation and apportionment of income from certain sales of inventory.

(a) *In general.* This section applies to determine the source of income derived from the sale of inventory property (inventory) produced (in whole or in part) by a taxpayer within the United States and sold within a foreign country, or produced (in whole or in part) by a taxpayer in one or more foreign countries and sold within the United States (Section 863 Sales). For purposes of this section, a taxpayer's production activity includes production activities conducted by members of the same affiliated group as defined under section 1504(a). A taxpayer's production activity also includes production activities conducted through a partnership of which the taxpayer is a partner either directly or through one or more partnerships. A taxpayer subject to this section must divide gross income from Section 863 Sales between production activity and sales activity using one of the methods described in paragraph (b) of this section. The source of gross income from production activity and from sales activity must then be determined under paragraph (c) of this section. Taxable income from Section 863 Sales is determined under paragraph (d) of this section. Paragraph (e) of this section describes the rules for electing the methods described in paragraph (b) of this section and the information that a taxpayer must disclose on a tax return. Paragraph (f) of this section applies to determine the source of certain income derived from a possession of the United States. Paragraph (g) of this section provides effective dates for the rules in this section. Once a taxpayer has elected a method described in paragraph (b) of this section, the taxpayer must separately apply that method to Section 863 Sales in the United States and to Section 863 Sales in foreign countries. In addition, the taxpayer must apply the rules of paragraphs (c) and (d) of this section by aggregating all Section 863 Sales to which a method described in paragraph (b) of this section applies. See section 865(i)(1) for the definition of inventory property; § 1.861–7(c) for the time and place of sale. See also section 865(e)(2).

(b) *Methods to determine income attributable to production activity and sales activity*—(1) *50/50 method*—(i) *Determination of gross income.* Generally, gross income from Section 863 Sales will be apportioned between production activity and sales activity under the 50/50 method as described in this paragraph (b)(1). Under the 50/50 method, one-half of the taxpayer's gross income will be considered income attributable to production activity and the source of that income will be determined under the rules of paragraph (c)(1) of this section. The remaining one-half of such gross income will be considered income attributable to sales activity and the source of that income will be determined under the rules of paragraph (c)(2) of this section. In lieu of the 50/50 method, the taxpayer may elect to determine the source of income from Section 863 Sales under the IFP method described in paragraph (b)(2) of this section or, with the consent of the District Director, the books and records method described in paragraph (b)(3) of this section.

(ii) *Example.* The following example illustrates the rules of this paragraph (b)(1):

Example. 50/50 method. (i) P, a U.S. corporation, produces widgets in the United States. P sells the widgets for $100 to D, an unrelated foreign distributor, in another country. P's cost of goods sold is $40. Thus, P's gross income is $60.

(ii) Pursuant to the 50/50 method, one-half of P's gross income, or $30, is considered income attributable to production activity, and one-half of P's gross income, or $30, is considered income attributable to sales activity.

(2) *IFP method*—(i) *Establishing an IFP.* A taxpayer may elect to allocate gross income earned from production activity and sales activity using the independent factory price (IFP) method described in this paragraph (b)(2) if an IFP is fairly established. An IFP is fairly established based on a sale by the taxpayer only if the taxpayer regularly sells part of its output to wholly independent distributors or other selling concerns in such a way as to reasonably reflect the income earned from production activity. A sale will not be considered to fairly establish an IFP if sales activity by the taxpayer with respect to that sale is significant in relation to all of the activities with respect to that product.

(ii) *Applying the IFP method.* If the taxpayer elects to use the IFP method, the amount of the gross sales price equal to the IFP will be treated as attributable to production activity, and the excess of the gross sales price over the IFP will be treated as attributable to sales activity. If a taxpayer elects to use the IFP method, the IFP must be applied to all Section 863 Sales of inventory that are substantially similar in physical characteristics and function, and are sold at a similar level of distribution as the inventory sold in the sale fairly establishing an IFP. The IFP will only be applied to sales that are reasonably contemporaneous with the sale fairly establishing the IFP. An IFP cannot be applied to sales in other geographic markets if the markets are substantially different. The rules of this paragraph will also apply to determine the division of gross receipts between production activity and sales activity in a Section 863 Sale that itself fairly establishes an IFP. If the taxpayer elects to apply the IFP method, the IFP method must be applied to all sales for which an IFP may be fairly established for that taxable year and each subsequent taxable year. The taxpayer will apply either the 50/50 method described in paragraph (b)(1) of this section or the books and records method described in paragraph (b)(3) of this section to any other Section 863 Sale for which an IFP cannot be established or applied for each taxable year.

(iii) *Determination of gross income.* The amount of a taxpayer's gross income from production activity is determined by reducing the amount of gross receipts from production activity by the cost of goods sold properly attributable to production activity. The amount of a taxpayer's gross income from sales activity is determined by reducing the amount of gross receipts from sales activity by the cost of goods sold (if any) properly attributable to sales activity. The source of gross income from production activity is determined under the rules of paragraph (c)(1) of this section, and the source of gross income from sales activity will be determined under the rules of paragraph (c)(2) of this section.

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

Example 1. IFP method. (i) P, a U.S. producer, purchases cotton and produces cloth in the United States. P sells cloth in country X to D, a unrelated foreign clothing manufacturer, for $100. Cost of goods sold for cloth is $80, entirely attributable to production activity. P does not engage in significant sales activity in relation to its other activities in the sales to D. Under these facts, the sale to D fairly establishes an IFP of $100. Assume that P elects to use the IFP method. Accordingly, $100 of the gross sales price is treated as attributable to production activity, and no amount of income from this

sale is attributable to sales activity. After reducing the gross sales price by cost of goods sold, $20 of the gross income is treated as attributable to production activity ($100–$80).

(ii) P also sells cloth in country X to A, a unrelated foreign retail outlet, for $110. Because P elected the IFP method and the cloth is substantially similar to the cloth sold to D, the IFP fairly established in the sales to D must be used to determine the amount attributable to production activity in the sale to A. Accordingly, $100 of the gross sales price is treated as attributable to production activity and $10 ($110–$100) is attributable to sales activity. After reducing the gross sales price by cost of goods sold, $20 of the gross income is treated as attributable to production activity ($100 − $80) and $10 is attributable to sales activity.

Example 2. Scope of IFP Method. (i) USCo manufactures three dissimilar products. USCo elects to apply the IFP method. In year 1, an IFP can be established for sales of product X, but not for products Y and Z. In year 2, an IFP cannot be established for any of USCo's products. In year 3, an IFP can be established for products X and Y, but not for product Z.

(ii) In year 1, USCo must apply the IFP method to sales of product X. In year 2, although USCo's IFP election remains in effect, USCo is not required to apply the IFP election to any products. In year 3, USCo is required to apply the IFP method to sales of products X and Y.

(3) *Books and records method.* A taxpayer may elect to determine the amount of its gross income from Section 863 Sales that is attributable to production and sales activities for the taxable year based upon its books of account if it has received in advance the permission of the District Director having audit responsibility over its tax return. The taxpayer must establish to the satisfaction of the District Director that the taxpayer, in good faith and unaffected by considerations of tax liability, will regularly employ in its books of account a detailed allocation of receipts and expenditures which clearly reflects the amount of the taxpayer's income from production and sales activities. If a taxpayer receives permission to apply the books and records method, but does not comply with a material condition set forth by the District Director, the District Director may, in its discretion, revoke permission to use the books and records method. The source of gross income treated as attributable to production activity under this method may be determined under the rules of paragraph (c)(1) of this section, and the source of gross income attributable to sales activity will be determined under the rules of paragraph (c)(2) of this section.

(c) *Determination of the source of gross income from production activity and sales activity*—(1) *Income attributable to production activity*—(i) *Production only within the United States or only within foreign countries*—(A) *Source of income.* Where the taxpayer's production assets are located only within the United States or only within a foreign country, the income attributable to production activity is sourced where the taxpayer's production assets are located. For rules regarding the source of income when production assets are located both within the United States and within one or more foreign countries, see paragraph (c)(1)(ii) of this section. For purposes of this section, *production activity* means an activity that creates, fabricates, manufactures, extracts, processes, cures, or ages inventory. See § 1.864–1.

(B) *Definition of production assets.* For purposes of this section, production assets include only tangible and intangible assets owned by the taxpayer that are directly used by the taxpayer to produce inventory described in paragraph (a) of this section. Production assets do not include assets that are not directly used to produce inventory described in paragraph (a) of this section. Thus, production assets do not include such assets as accounts receivables, intangibles not related to production of inventory (e.g., marketing intangibles, including trademarks and customer lists), transportation assets, warehouses, the inventory itself, raw materials, or work-in-process. In addition, production assets do not include cash or other liquid assets (including working capital), investment assets, prepaid expenses, or stock of a subsidiary. A partner will be treated as owning its proportionate share of the partnership's production assets, determined by reference to the partner's distributive share of partnership income for the year attributable to such production assets.

(C) *Location of production assets.* For purposes of this section, a tangible production asset will be considered located where the asset is physically located. An intangible production asset will be considered located where the tangible production assets owned by the taxpayer to which it relates are located.

(ii) *Production both within the United States and within foreign countries*—(A) *Source of income.* Where the taxpayer's production assets are located both within the United States and within one or more foreign countries, income from sources without the United States will be determined by multiplying the income attributable to production activity by a fraction, the numerator of which is the average adjusted basis of production assets that are located in one or more foreign countries and the denominator of which is the average adjusted basis of all production assets in foreign countries and in the United States. The remaining income is treated as from sources within the United States.

(B) *Adjusted basis of production assets.* For purposes of paragraph (c)(1)(ii)(A) of this section, the adjusted basis of an asset is determined under section 1011. The average adjusted basis is computed by averaging the adjusted basis of the asset at the beginning and end of the taxable year, unless by reason of material changes during the taxable year such average does not fairly represent the average for such year. In this event, the average adjusted basis will be determined upon a more appropriate basis. If production assets are used to produce inventory sold in Section 863 Sales and are also used to produce other property during the taxable year, the portion of its adjusted basis that is included in the fraction described in paragraph (c)(1)(ii)(A) of this section will be determined under any method that reasonably reflects the portion of the assets that produces inventory sold in Section 863 Sales. For example, the portion of such an asset that is included in the formula may be determined by multiplying the asset's average adjusted basis by a fraction, the numerator of which is the gross receipts from sales of inventory from Section 863 Sales produced by the asset, and the denominator of which is the gross receipts from all property produced by that asset. For purposes of this section, a taxpayer's basis in production assets held through a partnership shall be determined by reference to the partnership's adjusted basis in its assets (including a partner's special basis adjustment, if any, under section 743).

(iii) *Examples.* The following examples illustrate the rules of this paragraph (c)(1):

Example 1. Source of production income. (i) A, a U.S. corporation, produces widgets that are sold both within the United States and within a foreign country. The initial manufacture of all widgets occurs in the United States. The second stage of production of widgets that are sold within a foreign country is completed within the country of sale. A's U.S. plant and machinery which is involved in the initial manufacture of the widgets has an average adjusted basis of $200. A also owns warehouses used to store work-in-process. A owns foreign equipment with an average adjusted basis of $25. A's gross receipts from all sales of widgets is $100, and its gross receipts from export sales of widgets is $25. Assume that apportioning average adjusted basis using gross receipts is reasonable. Assume A's cost of goods sold from the sale of widgets in the foreign countries is $13 and thus, its gross

income from widgets sold in foreign countries is $12. A uses the 50/50 method to divide its gross income between production activity and sales activity.

(ii) A determines its production gross income from sources without the United States by multiplying one-half of A's $12 of gross income from sales of widgets in foreign countries, or $6, by a fraction, the numerator of which is all relevant foreign production assets, or $25, and the denominator of which is all relevant production assets, or $75 ($25 foreign assets + ($200 U.S. assets × $25 gross receipts from export sales/$100 gross receipts from all sales)). Therefore, A's gross production income from sources without the United States is $2 ($6 × ($25/$75)).

Example 2. Location of intangible property. Assume the same facts as *Example 1*, except that A employs a patented process that applies only to the initial production of widgets. In computing the formula used to determine the source of income from production activity, A's patent, if it has an average adjusted basis, would be located in the United States.

(2) *Income attributable to sales activity.* The source of the taxpayer's income that is attributable to sales activity will be determined under the provisions of § 1.861–7(c).

(d) *Determination of source of taxable income.* Once the source of gross income has been determined under paragraph (c) of this section, the taxpayer must properly allocate and apportion separately under §§ 1.861–8 through 1.861–14T the amounts of its expenses, losses, and other deductions to its respective amounts of gross income from Section 863 Sales determined separately under each method described in paragraph (b) of this section. In addition, if the taxpayer deducts expenses for research and development under section 174 that may be attributed to its Section 863 Sales under § 1.861–8(e)(3), the taxpayer must separately allocate or apportion expenses, losses, and other deductions to its respective amounts of gross income from each relevant product category that the taxpayer uses in applying the rules of § 1.861–8(e)(3)(i)(A). In the case of gross income from Section 863 Sales determined under the IFP method or the books and records method, the rules of §§ 1.861–8 through 1.861–14T must apply to properly allocate or apportion amounts of expenses, losses and other deductions allocated and apportioned to such gross income between gross income from sources within and without the United States. In the case of gross income from Section 863 Sales determined under the 50/50 method, the amounts of expenses, losses, and other deductions allocated and apportioned to such gross income must be apportioned between sources within and without the United States pro rata based on the relative amounts of gross income from sources within and without the United States determined under the 50/50 method.

(e) *Election and reporting rules*—(1) *Elections under paragraph (b) of this section.* If a taxpayer does not elect a method specified in paragraph (b)(2) or (3) of this section, the taxpayer must apply the method specified in paragraph (b)(1) of this section. The taxpayer may elect to apply the method specified in paragraph (b)(2) of this section by using the method on a timely filed original return (including extensions). A taxpayer may elect to apply the method specified in paragraph (b)(3) of this section by using the method on a timely filed original return (including extensions), but only if the taxpayer has received permission from the District Director to apply that method. Once a method under paragraph (b) of this section has been used, that method must be used in later taxable years unless the Commissioner consents to a change. See e.g., paragraph (b)(2)(ii) *Example 2* of this section. However, if a taxpayer elects to change to or from the method specified in paragraph (b)(3) of this section, the taxpayer must obtain permission from the District Director instead of the Commissioner. Permission to change methods from one year to another year will not be withheld unless the change would result in a substantial distortion of the source of the taxpayer's income.

(2) *Disclosure on tax return.* A taxpayer who uses one of the methods described in paragraph (b) of this section must fully explain the methodology used, the circumstances justifying use of that method, the extent that sales are aggregated, and the amount of income so allocated.

(f) *Income partly from sources within a possession of the United States.* [Reserved]

(g) *Effective dates.* The rules of paragraphs (a) through (e) of this section will apply to taxable years beginning 30 days after publication of final regulations. However, taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and before 30 days after publication of these regulations as final regulations. For years beginning before 30 days after the publication of these regulations as final regulations, see § 1.863–3 (as contained in 26 CFR part 1 revised as of April 1, 1995).

Par. 4. Section 1.863–4 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1.863–4 Certain transportation services.

(a) *General.* A taxpayer carrying on the business of transportation service (other than an activity giving rise to transportation income described in section 863(c) or to income subject to other specific provisions of this title) between points in the United States and points outside the United States derives income partly from sources within and partly from sources without the United States.

* * * * *

§ 1.863–5 [Removed]

Par. 6. Section 1.863–5 is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30087 Filed 12–7–95; 2:00 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

33 CFR Part 52

[OST Docket No. OST–95–878; Notice 95–14]

RIN 2105–AC31

Coast Guard Board for Correction of Military Records; Procedural Regulation

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to amend its regulations with respect to reconsideration of final decisions of the Board for Correction of Military Records of the Coast Guard (Board). This action is taken on the Department's initiative in order to streamline processing of these cases and to clarify the circumstances under which final decisions can be reconsidered. The proposed amendment will make it possible for the Board to expedite reconsideration and will increase the resources available to meet the requirement that all cases be decided within 10 months of the receipt of a completed application.

DATES: Comments must be submitted on or before February 9, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed, preferably in duplicate, to Docket No. OST–95–878, Documentary Services Division, C–55, PL–401, U.S. Department of Transportation; 400 Seventh Street SW, Washington, D.C. 20590. Comments will be available for review by the public at this address from 9 a.m. through 5 p.m., Monday

through Friday. Persons wishing acknowledgment of their comments' receipt should include a stamped, self-addressed postcard. The Documentary Services Division will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert H. Joost, Chairman, Board for Correction of Military Records of the Coast Guard, C–60, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street SW, Washington, D.C. 20590–0001. Telephone: (202) 366–9335.

SUPPLEMENTARY INFORMATION:

The Board Process With Respect to Reconsideration

The Secretary of Transportation, acting through the Department of Transportation Board for Correction of Military Records of the Coast Guard, is authorized by section 1552 of title 10, United States Code, to correct the military records of serving, separated and retired Coast Guard military personnel when there is an error or injustice in a military record.

After a final decision has been reached on an application for correction, the decision can be appealed by the applicant in an appropriate Federal court. There is no right, under 10 U.S.C. 1552, to administrative reconsideration of a final decision, but applicants have always been allowed to request such reconsideration by regulation.

Under the present DOT BCMR regulation with respect to reconsideration (33 CFR 52.67(b)), the only basis for reconsideration is the presentation of ''newly discovered evidence or information, not previously considered by the Board * * * [which] would, if true, result in a determination other than that originally made.''

The present regulation does not explicitly authorize reconsideration if the applicant offers evidence showing that material legal or factual error was made by the Board in its original decision. Also, it does not provide a means for expeditious handling of requests for reconsideration that do not meet the threshold requirements for review. Because of the current statutory direction that Board decisions be issued within 10 months of receiving a complete application, and the resulting pressure on Board resources, the Board must find ways to increase its efficiency of operation. An expedited process for handling facially defective reconsideration requests is proposed as an appropriate step in that direction. In addition, the present rule does not require that a request for reconsideration be made within a certain time period.

The Proposal

The proposed rule would explicitly authorize the Board to consider applications for reconsideration upon a showing that the Board committed legal or factual error in the original determination that could have resulted in a determination other than that made.

The proposed rule would authorize the Chairman not to docket applications for reconsideration that do not meet the threshold requirements for reconsideration, i.e. applications that only (1) present evidence or information previously considered by the Board, (2) present new evidence or information that is clearly not material to the result in the case, (3) present new evidence or information that could have been submitted earlier with the exercise of reasonable diligence, or (4) make arguments as to legal or factual error that are clearly not material to the result. The phrase ''otherwise comes to the attention of the Board'' has been deleted, however, as unnecessary.

The proposed rule would provide that no Board member who considered an applicant's original application for correction would participate in the consideration of that person's application for reconsideration. There will, to the extent practicable, be a related prohibition on the staff member; the person who drafted the original decision would not draft the reconsideration decision. In light of these safeguards, it would not be necessary for the Secretary's designate to approve each denial of a reconsideration request, thus expediting the review process.

Section-by-Section Analysis

Section 52.67, Reconsideration, is rewritten to add the new requirements outlined above, and to simplify the procedure on reconsideration.

Paragraph (a) provides that reconsideration of an application may occur if the applicant meets at least one of two sets of criteria. The first of these, paragraph (a)(1), directs reconsideration if an applicant presents evidence or information that was not previously considered by the Board if that evidence or information could result in a different determination and if it ''could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence.'' The second of these, paragraph (a)(2), directs reconsideration if an applicant presents evidence or information that the Board committed legal or factual error in the original determination that could have resulted in a different result.

Paragraph (b) directs the Chairman to docket a reconsideration request if it meets the requirements of paragraph (a)(1) or (a)(2). If neither of these requirements is met, the Chairman shall not docket the request, and shall return the application to the applicant with a statement that no action is being taken due to a failure to meet the threshold requirements for docketing.

Paragraph (c) provides that the Board shall consider each application for reconsideration that has been docketed under paragraph (b). This paragraph also provides that the final decision on reconsideration shall involve a different Board than the one that initially considered the application.

Paragraph (d) provides that the Board's final action on docketed application for reconsideration shall be the same as if they were original applications for correction.

Paragraph (e) provides that an applicant's request for reconsideration must be filed within two years after the issuance of a final decision, subject to other legal rules such as the Soldier's and Sailor's Civil Relief Act. The two-year statute of limitations parallels the time period allowed by Article 73 of the Uniform Code of Military Justice for petitioning for a new trial after the approval of a court-martial sentence on the grounds of newly discovered evidence or fraud on the court. If the Chairman dockets an applicant's request for reconsideration under paragraph (b), the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

Regulatory Process Matters

This NPRM does not propose a significant rule under Executive Order 12681 or the Department's Regulatory Policies and Procedures. The costs of a purely procedural change in the Board's rule would be negligible. The NPRM would not, if adopted, have a significant economic effect on a substantial number of small entities, as defined in the Regulatory Flexibility Act. There are no Federalism factors to warrant the preparation of a Federalism assessment.

List of Subjects in 32 CFR Part 52

Administrative practice and procedure, Archives and records, Military personnel, Military records.

Issued this 24th day of November at Washington, DC.

Mortimer L. Downey,

Deputy Secretary of Transportation.

For the reasons set forth in the preamble, the Office of the Secretary of the U.S. Department of Transportation proposes to amend 33 CFR Part 52 as follows:

PART 52—[AMENDED]

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

Authority: 10 U.S.C. 1552; 49 U.S.C. 108; Pub. L. 101–225, 103 Stat. 1908, 1914.

2. Section 52.67 is revised to read as follows:

§ 52.67 Reconsideration.

(a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board that could result in a determination other than that originally made. Evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

(2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

(b) The Chairman shall docket a request for reconsideration of a final decision if it meets the requirements of paragraph (a)(1) or (a)(2) of this section. If neither of these requirements is met, the Chairman shall not docket such request.

(c) The Board shall consider each application for reconsideration that has been docketed. None of the Board members who considered an applicant's original application for correction shall participate in the consideration of that applicant's application for reconsideration.

(d) Action by the Board on a docketed application for reconsideration is subject to § 52.64(b).

(e) An applicant's request for reconsideration must be filed within two years after the issuance of a final decision, except as otherwise required by law. If the Chairman dockets an applicant's request for reconsideration, the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

[FR Doc. 95–29345 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–62–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–029–1–7177b; FRL–5316–6]

Approval and Promulgation of Implementation Plans State of South Carolina's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of South Carolina for the purpose of establishing a Federally enforceable state construction and operating permit (FESCOP) program. In order to extend the Federal enforceability of South Carolina's FESCOP to hazardous air pollutants (HAPs), EPA is also proposing approval of South Carolina's FESCOP regulations pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA). In the Final Rules Section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATE: To be considered, comments must be received by January 10, 1996.

ADDRESSES: Written comments should be addressed to: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Mangement Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

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

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

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

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4153.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: September 20, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–30107 Filed 12–8–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91–281; FCC 95–480]

Calling Number Identification Service—Caller ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On November 30, 1995, the Commission adopted a Fourth Notice of Proposed Rulemaking (Fourth NPRM) addressing numerous petitions for waiver of its Caller ID rules. The Fourth NPRM is intended to address issues associated with requiring carriers to deploy blocking capabilities. It seeks comment on whether local exchange carriers (LECs) must pass calling party number (CPN) if they use particular switches that do not have CLASS software installed.

DATES: Comments must be filed on or before December 27, 1995, and reply comments must be filed on or before January 10, 1996.

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

FOR FURTHER INFORMATION CONTACT: Michael Specht, Senior Engineer, Network Services Division, Common Carrier Bureau, (202) 418–2378 or Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Fourth Notice of Proposed Rulemaking in the matter of Calling Number Identification Service—Caller ID, (CC Docket No. 91–281, FCC 95–480, adopted November 30, 1995 and released December 1, 1995). The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington, D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Analysis of Proceeding

On May 5, 1995, the Commission affirmed its finding that interstate delivery of a calling party's number is in the public interest. The Commission noted that widespread availability of CPN promotes new services, consistent with Commission responsibilities under Section 1 and 7 of the Communications Act and benefits the public by enabling consumers to conduct telephone transactions more efficiently. The Commission also continued to recognize the importance of balancing the benefits of such widespread availability with the privacy interests of calling and called parties and the need for reasonable consumer education. The Commission affirmed rules that require carriers with Signalling System 7 (SS7) call set up capability to transport CPN to interconnecting carriers without additional charge. The Commission also affirmed rules that require originating carriers to recognize *67 as the first three digits of a call as a caller's request for privacy. The Commission permitted per line blocking where state policy allows and established rules that carriers providing per line blocking services recognize *82 as a caller's request that privacy not be provided. Additionally, the Commission affirmed rules that require carriers to notify customers with respect to *67 and *82 capabilities.

Over the past several months, the Commission has received numerous requests from petitioners seeking waivers, stays or declaratory rulings of the Commission's caller ID rules. On October 30, 1995, the Commission released an Order that addressed some of these requests for relief. *See Rules and Policies Regarding Calling Numbering Identification Service—Caller ID,* Order, CC Docket No. 91–281, FCC 95–446, released October 30, 1995. On November 30, 1995, the Common Carrier Bureau, pursuant to delegated authority, adopted an Order that addressed the remaining petitions for relief. *See Rules and Policies Regarding Calling Number Identification Service—Caller ID,* Order, CC Docket No. 91–281, DA 95–2415 (Com. Car. Bur. adopted November 30, 1995).

The Fourth NPRM tentatively concludes that LEC switches not equipped with CLASS software should not be required to pass CPN and that they should be permitted to pass it only if they can provide the blocking and unblocking capabilities specified in Section 64.1601(b) of the Commission's rules. The Fourth NPRM seeks comment on its tentative conclusions, and specifically on the economic feasibility of adding blocking and unblocking capabilities to switches already able to pass CPN.

Ordering Clauses

It is further ordered, pursuant to Sections 1, 4(i) and (j), 201–205, 218 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, and 218, that notice is hereby given of the proposed changes in policies regarding the application of caller ID rules to switches without CLASS software, and comment is invited on this proposal.

List of Subjects in 47 CFR Part 64

Calling party telephone number, Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30051 Filed 12–8–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[CS Docket No. 95–174; FCC 95–472]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking seeks comment on proposed methods for cable operators' setting of uniform rates for uniform services offered in multiple franchising areas. The Commission is exploring this issue to solicit comment on possibly permitting operators to establish uniform rates. The item will help the Commission create a record on this issue, which will assist the Commission in designing new or amending current regulations to allow operators to establish uniform rates.

DATES: Comments are due on or before January 12, 1996 and reply comments are due on or before February 12, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Larry Walke, (202) 416–0847.

SUPPLEMENTARY INFORMATION: The text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

[CS Docket No. 95–174]

In the matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation Uniform Rate-Setting Methodology.

Notice of Proposed Rulemaking

Adopted: November 28, 1995.
Released: November 29, 1995.

By the Commission:

Comment Date: January 12, 1996.
Reply Comment Date: February 12, 1996.

I. Introduction

1. Under the Commission's cable service rate regulations, a cable operator serving multiple franchise areas must establish maximum permitted service rates in each franchise area. These rates often vary from franchise area to franchise area, even if each area receives the identical package of program services. This outcome may cause needless confusion for subscribers, as well as unnecessary administrative burdens for cable companies. In addition, a cable operator's ability to market its product on a regional basis may be hindered. Therefore, in this Notice of Proposed Rulemaking (''NPRM''), we explore the design and implementation of an optional rate-setting methodology under which a cable operator could establish uniform rates for uniform cable service tiers offered in multiple franchise area.

II. Background

2. Under the Cable Television Consumer Protection and Competition Act of 1992 (the ''1992 Cable Act''), the rates charged by a cable system are

subject to regulation unless the system faces effective competition. In particular, the 1992 Cable Act directed the Commission to establish regulations designed to protect subscribers from unreasonable rates for certain types of cable services offered by such systems. Rate-regulated services consist of the basic service tier (''BST'') and the cable programming services tier (''CPST'').

3. Every cable operator subject to rate regulation must offer a BST that includes all local broadcast stations that the operator carries on its system, plus all public, educational, and governmental (''PEG'') access channels required by the operator's franchise agreement with its local franchising authority. If it so chooses, a cable operator may offer additional programming on its BST beyond these minimum requirements. Subscribers to a rate-regulated cable system must purchase the BST in order to have access to any other tier of service. CPSTs include all non-BST programming offered over the cable system, other than programming offered to subscribers on a per channel or per program basis. There is no general requirement that an operator offer a CPST, and some operators offer no CPST. Per channel and per program offerings are generally exempt from rate regulation.

4. Congress identified several specific factors that the Commission must consider in establishing regulations governing BST and CPST rates. The Commission may take other factors into account as well. In addition, the 1992 Cable Act required that the Commission ''seek to reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission'' in establishing its regulations.

5. Under the primary method of rate regulation adopted by the Commission, a regulated cable system determines the maximum permitted initial rates for cable services pursuant to a benchmark formula. In selecting a primary regulatory model, the Commission employed a benchmark formula instead of the cost-of-service methodology that is traditionally applied to public utilities because of the often significant administrative costs and burdens on regulators and regulated companies associated with cost-of-service regulation. However, operators subject to regulation do have the option of setting rates in accordance with a cost-of-service methodology that the Commission has developed.

6. To set or justify its initial rates in accordance with the benchmark formula, a cable operator first must use FCC Form 1200. This form generates a maximum permitted rate as of May 15, 1994 for a particular franchise area, based upon various characteristics specific to the cable system within that franchise area. These variables include channels per tier, number of regulated non-broadcast channels per tier, number of subscribers in the local franchise area, number of tier changes, the census income level for the franchise area, number of additional outlets and remote control units in the franchise area, system-wide subscribership, whether the system is part of a multiple system operation (''MSO''), and the number of systems in the MSO. A benchmark operator may, and sometimes must, adjust the rates permitted by Form 1200 to take account of changes in inflation and other costs since May 15, 1994. Currently, the operator must use FCC Form 1210 to calculate these adjustments. As of the effective date of the Form 1240 promulgated pursuant to the recently adopted Thirteenth Order on Reconsideration, 60 FR 52106 (October 6, 1995), operators may make rate adjustments as provided by FCC Form 1240 in lieu of Form 1210. Whereas an operator can file Form 1210 as often as once per calendar quarter to adjust rates to take account of costs already incurred by the operator, Form 1240 will be filed no more than annually but will permit the operator to adjust rates based on costs to be incurred within the coming year. In addition, operators may increase rates to reflect the addition of new programming services to regulated tiers. Our rules provide two methods for adjusting rates for the addition of programming services. First, an operator can add channels to CPSTs using our original ''going-forward'' rules, which allow the operator to charge subscribers the cost of the additional programming plus up to an additional 7.5% markup on that cost. Second, an operator may add programming services under the Commission's more recently adopted going-forward option, which allows an operator to charge subscribers up to $0.20 per channel for additional channels and up to a further $0.30 in associated licensing fees. The latter going-forward rules similarly require specific decreases in subscriber rates when an operator deletes channels from its lineup, depending on when the channel in question was added.

7. Enforcement of the Commission rate regulations is divided between qualified local franchising authorities and the Commission. A local franchising authority may enforce regulation of the cable operator's BST once the Commission has received and approved the local franchising authority's certification that it has the legal and practical ability to do so. Upon receiving notification that the franchising authority has been certified by the Commission to regulate rates, a cable operator opting for benchmark regulation must justify its existing BST rates pursuant to the benchmark formula. Once regulated, the operator also must seek local approval for future BST rate increases. The operator seeks such approvals by filing the forms described above. The operator also must justify its rates for equipment and installations associated with the BST. The franchising authority must then review the forms, may request additional information if reasonably necessary to complete its review, and ultimately issue an order approving or disapproving the rates proposed by the operator.

8. The participation by local franchising authorities in the regulation of cable service is critical. Generally, the Commission establishes federal standards and procedures concerning various aspects of cable service which local franchising authorities implement. These rules include but are not limited to subscriber rates, cable service technical standards, and customer service. Local franchising authorities are the first line of enforcement of these numerous regulations. While the Commission may be on hand, either by statute or informally, to help resolve any disputes that may arise between a cable provider and a local franchising authority, the responsibility to oversee cable service regulations falls primarily on the franchise authorities. Generally, the Commission gives significant deference to decisions by local franchising authorities. For example, where a cable operator appeals a franchising authority's rate decision, the Commission will not conduct de novo review of the decision; rather, the Commission will defer to the local authority's decision provided there is a rational basis for the decision. This process is just one example of the Commission's significant reliance upon local franchising authorities in the regulation of basic cable service. Moreover, in all but the most rare situations, local authorities administer cable service regulation without federal assistance.

9. An operator's CPST is subject to regulation directly by the Commission. Commission enforcement of CPST rate regulation is triggered by the filing of a complaint by a subscriber or franchising authority or other relevant state or local regulatory authority. Upon the filing of

such a complaint, the operator must file the necessary forms with the Commission, which then follows a review process analogous to that used by local franchising authorities regulating BST rates.

10. The benchmark approach described above requires operators to establish a separate rate structure in each franchise area served, since many of the variable used to generate the maximum rate are franchise specific. For example, while the data on whether the system is part of an MSO will be identical throughout all of the franchise areas served, the census income and subscribership variables are measured on a franchise area basis and necessarily will vary among franchise areas. Similarly, costs associated with PEG channels and other franchise-related costs may vary among franchise areas. A disparity in rates among franchise areas will occur even if the operator provides service to multiple franchise areas through a single, integrated cable system, since even in that case rates are set separately for each franchise area on the basis of variables specific to the franchise area.

11. Relatedly, we note that the acquisition and clustering of neighboring cable systems by MSOs has become fairly common. An operator seeking to establish uniform rates and services for clustered systems likely will need to add channels to the programming lineups of certain system and delete channels from the lineups of other systems. While the Commission's ''going-forward'' rate regulations typically provide operators with the flexibility to establish a uniform package of programming services, the operator's efforts to equalize prices will be severely constrained because the rules quite specifically dictate permitted changes in rates that must accompany changes in level of service and do not permit regional averaging of the data used to complete rates.

III. Discussion

12. We tentatively conclude that permitting operators serving multiple franchise areas to establish uniform services at uniform rates in all such areas would be beneficial for subscribers, franchising authorities, and operators. For example, facilitating an operator's ability to advertise a single rate for cable service over a broad geographic region may lower marketing costs and enhance the operator's efficiency in responding to competition from alternative service providers that typically may establish and market uniform services and rates without regard to franchise area boundaries. The increased ability of operators to compete resulting from this approach may increase penetration in a particular franchise area. Such an approach could reduce consumer confusion because a subscriber moving from one part of the operator's service area to another would not experience any difference in price or service offerings. We explore below two alternatives for permitting an operator to establish uniform rates for uniform services across multiple franchise areas, while fully protecting subscribers from unreasonable rates, and solicit comment on these and any other possible approaches. Before discussing these two methodologies, we will identify several issues that will arise regardless of which methodology we ultimately adopt.

13. Cable operators currently serve multiple franchise areas using a variety of system structure; some operators serve multiple areas with a single, integrated cable system while others use multiple, distinct systems. An operator's rates are not dependent on whether single or multiple systems are used to deliver service. We propose that under a uniform rate0-setting option, a cable operator be allowed to establish uniform rates for uniform service offerings in multiple franchise areas regardless of whether the operator serves the multiple franchise areas with on integrated cable system (i.e., one ''headend'') or with multiple separate cable systems, and seek comment on this proposal.

14. We believe that cable operators primarily will seek to establish uniform rates for systems serving multiple franchise areas that are located within some measure of proximity to each other, perhaps for purposes of regional adverting. Moreover, it is likely that the service costs and characteristics, such as the number of channels, density of subscribers, and median income level, associated with various franchise areas typically will vary as the geographic distances increase between the multiple franchise areas. This circumstance can increase the complexity of uniform rate-setting across multiple franchise areas. We note that a cable operator's obligation under the ''must-carry'' rules to carry local over-the-air broadcast stations, as well as the operator's copyright fee responsibilities, are determined based on the Area of Dominant Influence (''ADI'') in which the system is located. Section 4 of the 1992 Cable Act specifies that a commercial broadcasting station's market shall be determined in the manner provided in § 73.3555(d)(3)(i) of the Commission's Rules, as in effect on May 1, 1991. This section of the rules, now redesignated § 73.3555(e)(3)(i), refers to Arbitron's ADI for purposes of the broadcast multiple ownership rules. Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991–1992 Television Market Guide. This Arbitron Guide is available at the Federal Communications Commission, 2033 M Street, N.W., Room 200, Washington, D.C. We note that Arbitron, the company that establishes the boundaries for ADIs, has ceased updating its ADI market list. Commission staff is currently exploring the designation of a replacement measure. Accordingly, we seek comment on whether the ADI, or some other region, would be appropriate for the setting of uniform rates. We seek comment on additional benefits of limiting uniform rate-setting to franchise areas located within the same ADI or similar region, as well as any difficulties resulting from this limitation. We further seek comment on the benefits or detriments of limiting rates to franchise areas located within the same county or state. Finally, we seek comment on the costs and benefits of permitting cable operators to select the region in which to set uniform rates under a uniform rate-setting method.

15. Below we describe two possible approaches for permitting cable operators to establish uniform rates for uniform packages of services offered to multiple franchise areas. We invite comment from interested parties as to these approaches and we seek suggestions as to any other alternatives that would further the goals discussed above.

16. The first approach would work generally as follows. A cable operator first would determine or identify BST and CPST rates established in each local franchise area pursuant to our existing rate regulations, as adjusted to reflect permitted or required rate changes resulting from the addition or deletion of channels necessary to structure uniform tiers throughout the franchise areas served. We seek comment on whether an operator would similarly follow our existing regulations concerning rates for equipment. BST rates then would be equalized by reducing all BST rates charged in the relevant region to the lowest regulated BST rate charged in any one franchise area located in the region. The new uniform BST rate would now constitute the operator's maximum permitted rate for basic cable service in all the relevant franchise areas. The operator then would add the total amount of ''lost'' revenue resulting from the various BST rate reductions to the total CPST

revenues to which the operator is otherwise entitled, under our existing rules, for all franchise areas in the relevant region. The operator then would determine a uniform CPST rate by dividing the total of the displaced BST revenues and existing CPST revenues by all CPST subscribers in the region. Thereafter, the operator would apply our going-forward policies and annual rate adjustment regulations on a regional basis. A numerical example of this option can be found below.

17. In some instances, cable systems may be regulated in certain franchise areas within the region and unregulated in others. We proposed that operators be free to establish uniform rates under the uniform rate-setting approach in unregulated as well as regulated franchise areas for purposes of uniformity. We believe that in such situations, an operator may elect to base uniform rates in part on data from unregulated areas only if such uniform rates also are charged in the unregulated areas. We believe that this optional approach further enhances operators' flexibility in establishing uniform rates. Moreover, uniform rates calculated pursuant to the method ultimately adopted in this proceeding, and charged in unregulated areas, should increase an operator's regulatory certainty with respect to whether the subscriber rates charged in the unregulated areas are reasonable under our rules should the operator later become subject to rate regulation in one of those areas. An operator later becoming subject to regulation would follow our existing procedures for establishing regulated rates, including determining an initial rate pursuant to our benchmark formula or cost-of-service rules, and seeking the approval of rates from the local franchising authority. We seek comment on this approach. We also seek comment on how an operator's regulated rates for equipment may affect the setting of uniform rates.

18. An operator's rates would remain subject to the dual jurisdictions of the affected local franchising authorities and the Commission. Upon the initial application of this approach, BST rates would be unchanged in at least one franchise area and would be reduced in each franchise area with higher rates. Thus, this proposal may benefit many subscribers who receive only basic cable service, and should be cost-neutral to the remaining basic-only subscribers in the franchise area(s) with the lowest current BST rates. Certified local franchising authorities would retain jurisdiction to ensure that the operator's BST rates are in compliance with our rules. The operator would recoup the costs of reduced BST rates through the averaged CPST rates over which the Commission would retain jurisdiction. We seek comment on this proposed approach, including comment on: (1) the costs and benefits of requiring operators to reduce BST rates to the lowest common rate under this option, (2) the impact of an operator's redistribution of BST rate reductions among CPST rates charged in neighboring franchise areas, and (3) the application of our going-forward policies and annual rate adjustment on a regional basis. We note that our rules allow franchising authorities to review and approve operators' proposed BST rates and increases to those rates. Under this option, however, pre-approval of uniform BST rates by franchising authorities generally will be unnecessary given that subscriber rates typically will decrease or remain unchanged. We seek comment on the benefits and costs of this approach for local franchising authorities, and whether this approach will protect subscribers from unreasonable rates.

19. Under the second possible approach for establishing uniform rates for uniform services, a cable operator would determine or identify BST and CPST rates charged in each of the relevant franchise areas pursuant to our existing rate regulations, as adjusted for rate changes resulting from the addition or deletion of channels necessary to structure uniform service tiers. We seek comment on whether an operator similarly would follow our existing regulations concerning rates for equipment. After aggregating the BST rates and revenues for all the franchise areas in the region, and then the CPST rates and revenues for all franchise areas, the operator would determine a single ''blended'' rate for BSTs, and a single blended rate for CPSTs, to be charged in all franchise areas in the region pursuant to a formula designed by the Commission. The blended rates for BSTs and CPSTs would be determined by averaging the operator's total BST and CPST rates, respectively, on a per subscriber basis for all subscribers in the region, in order to ensure that the establishment of uniform rates is revenue-neutral to the cable operator. A numerical example of this option can be found below. The operator would be required to justify its blended rates to each local franchising authority certified to regulate rates. The operator would be free, of course, to establish this rate in uncertified areas, for purposes of uniformity across a wide region. As noted for the other proposed approach, we propose that an operator may elect a base uniform rates in part on data from unregulated areas only if such uniform rates also are charged in the unregulated areas, and believe that similar benefits for operators and subscribers will result from this requirement under both possible approaches. We seek comment on this tentative conclusion, as well as comment on other benefits and detriments of the cable operator basing the blended rate in part on data from such unregulated areas. We also seek comment on how an operator's establishment of uniform rates in uncertified areas may impact on the operator's ability to later implement required refunds or prospective rate reductions in certified areas.

20. After setting initial uniform rates, the operator would apply our going-forward policies and the recently adopted annual adjustment method on a regional basis to adjust future rates. Again, the dual jurisdictional boundaries of franchising authorities and the Commission would remain intact. We seek comment on this approach generally, including comment on: (1) any associated burdens for regulated cable companies and regulators, (2) whether this approach would protect cable subscribers from unreasonable rates in accordance with the 1992 Cable Act, (3) the proposed calculation of the blended rate, and (4) the application of our going-forward policies and annual adjustment method on a regional basis. We note that under this approach subscribers' BST rates may increase in certain jurisdictions (and decrease in others) as BST rates are adjusted to establish uniformity. We seek comment on the benefits and costs of adopting this formula given that certain BST subscribers may experience rate increases.

21. Both proposed uniform rate setting methodologies will result in increases in CPST rates for some subscribers. In light of the cost savings to cable operators likely to be created by implementation of uniform rates, we seek comment on whether it is appropriate to either limit the amount of increase a CPST subscriber must pay in a given year as a result of this institution of uniform rates or to phase-in significant increases over a two-year period. Comments should also address what administrative burdens such a limitation or phased-in increase would create for operators.

22. Several potential timing circumstances may affect the implementation of a uniform rate-setting approach. For example, where an operator has submitted justifications, the operator may be subject to multiple

local tolling orders of varying durations which can complicate implementation of uniform BST rates. After the initial 30 day notice period that must precede any rate adjustment, franchising authorities can toll the effective date of a proposed rate for an additional 90 days in benchmark cases or 150 days in cost of service cases. We seek suggestions of procedures that would permit a cable operator in this situation to establish uniform rates as expeditiously as possible. We solicit comment on allowing proposed uniform rates to take effect automatically after some period of time, subject to ultimate resolution in a later ''truing-up'' process, in which rate discrepancies could be reflected in rates for the following year.

23. In proposing to give cable operators flexibility to charge uniform rates for uniform services, we in no way seek to circumscribe the authority of local franchising authorities to negotiate franchise-specific terms in their agreements with cable operators. For example, we note that local franchising authorities typically establish requirements in a franchise agreement with respect to the designation or use of the franchised cable operator's channel capacity of PEG services. This could result in a cable system having a non-uniform channel line-up within franchise areas where it seeks to establish uniform rates. We seek comment on whether our uniform rate proposals require any modification or adjustment to accommodate such non-uniform offerings.

24. A further problem may arise because PEG requirements and other franchise obligations will vary between franchise areas, such that the operator's ''franchise related costs,'' one of the variables used to establish and adjust rates, also will vary among franchise areas. We seek to provide cable operators with uniform rate alternatives while allowing franchising authorities flexibility to negotiate franchise terms and conditions that respond to particular community needs. We also seek to ensure that the uniform rate proposal does not allow franchise-specific costs to be shifted from one community to another. One alternative for resolving this issue would be to permit the cable operator simply to itemize and charge for franchise-related costs outside the uniform rate-setting formula. We seek comment on this approach. We also seek suggestions of other methods that could compensate operators for legitimately incurred expenses while protecting subscribers from unreasonable rates. Finally, we seek comment on additional potential obstacles to the establishment of uniform rates and service offerings, and possible resolutions to such obstacles.

IV. Initial Regulatory Flexibility Act Analysis

25. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (''IRFA'') of the expected impact of these proposed policies and rules on small entities. 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 the NPRM, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the NPRM, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

26. Reason for Action. The Commission has perceived that our cable service rate regulations may impede a cable operator's ability to establish uniform rates for uniform services offered in multiple clustered franchise areas. We believe that allowing operators to set such uniform rates may facilitate operators' regional marketing of services, reduce administrative burdens on both regulators and cable companies, and reduce consumer confusion resulting from disparate rates. The NPRM proposes two possible alternatives for setting uniform rates, and solicits comments on further approaches.

27. Objectives. To explore a method under which a cable operator could establish uniform rates for uniform services offered in multiple franchise areas.

28. Legal Basis. Action as proposed for this rulemaking is contained in Section 623 of the Communications Act of 1934, as amended, 47 U.S.C. § 543.

29. Description, Potential Impact and Number of Small Entities Affected. The proposals, if adopted, will not have a significant effect on a substantial number of small entities.

30. Reporting, Recordkeeping and Other Compliance Requirements. None.

31. Federal Rules which Overlap, duplicate or Conflict with these Rules. None.

32. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives. None.

V. Paperwork Reduction Act

33. This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due to the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

VI. Procedural Provisions

34. Ex parte Rules—Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules. See generally 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

35. 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 and reply comments, you must file an original plus nine copies. Comments are due by January 12, 1996, and reply comments are due by February 12, 1996. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

36. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal

Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236, NEBO, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

37. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

VII. Ordering Clauses

38. It is ordered that, pursuant to Sections 623 of the Communications Act of 1934, as amended, 47 U.S.C. 543 notice is hereby given of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this NPRM, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

39. It is further ordered that the Secretary shall send a copy of this NPRM, 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, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

List of Subjects in 47 CFR Part 76

[Cable television.]

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Examples of Proposed Methods

Current rates	Franchise A	Franchise B	Franchise C
BST	$10	$11	$11
CPST	21	21	20
Total	31	32	31

*Each franchise area has 11,000 BST subscribers and 10,000 CPST subscribers.

First Proposed Method:

Step 1: BST rates reduced to lowest in region: BST rates in franchise areas ''B'' and ''C'' reduced to $10.

Step 2: ''Lost'' BST revenues is totaled; $1/subscriber in franchise areas ''B'' and ''C''=($1×11,000)+($1×11,000)=$22,000.

Step 3: Current CPST revenue is totaled: ($21×10,000)+($21×10,000)+($20×10,000)=$620,000.

Step 4: Current CPST revenue is added to Lost BST revenue to create new CPST revenue requirement: $620,000+$22,000=$642,000.

Step 5: New CPST revenue requirement is divided evenly by all CPST subcribers in the region to calculate new uniform CPST rate: $642,000/30,000=$21.40.

Current rates	Franchise A	Franchise B	Franchise C
BST	$10.00	$10.00	$10.00
CPST	21.40	21.40	21.40
Total	31.40	31.40	31.40

Franchise A: no change in BST rates; increase in CPST and overall rates.

Franchise B: decrease in BST rates; increase in CPST rates; decrease in overall rates.

Franchise C: decrease in BST rates; increase in overall rates.

Second Proposed Method:

Step 1: Average current BST rates on a per BST subscriber basis to calculate average, uniform BST rate:

$10(11,000)+$11(11,000)+$11(11,000) =$10.67/BST subscriber.

Step 2: Average current CPST rates on a per CPST subscriber basis to calculate average, uniform CPST rate:

$21(10,000)+$21(10,000)+$20(10,000) =$20.67/CPST subscriber.

Total: $31.34/subscriber.

New rates	Franchise A	Franchise B	Franchise C
BST	$10.67	$10.67	$10.67
CPST	20.67	20.67	20.67
Total	31.34	31.34	31.34

Franchise A: increase in BST rates; decrease in CPST; increase in overall rates.

Franchise B: decrease in BST rates; decrease in CPST rates; decrease in overall rates.

Franchise C: decrease in BST rates; increase in CPST rates; increase in overall rates.

The results under each proposed method will vary widely depending on the current rates and the numbers of subscribers in each franchise area. In addition, these examples do not account for the impact of channel changes that may be necessary to achieve uniform packages of services.

[FR Doc. 95–29807 Filed 12–8–95; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 60, No. 237
Monday, December 11, 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

Forest Service

Formulation of the Communications Strategy for the Revision of the Cibola National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

SUMMARY: The Cibola National Forest requests comment on the formulation of a communications strategy that will describe how the public and government entities may participate that will describe how the public and government entities may participate in the prerevision review and revision of the Cibola National Forest Plan on an ongoing basis. This is an invitation to the public and representatives of government entities to express their ideas and suggestions on ways that the Cibola National Forest can coordinate and disseminate information throughout the entire forest planning process.

DATES: This notice is effective the December 11, 1995. Comments must be submitted in writing on or before February 9, 1996.

ADDRESSES: Direct comments to: Jeanine A. Derby, Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE, Suite A, Albuquerque, New Mexico 87110.

FOR FURTHER INFORMATION CONTACT: Karen Carter, Public Affairs Officer, Cibola National Forest at 505–761–4650.

BACKGROUND: The Land and Resource Management Plan defines the long-term direction for managing the Cibola National Forest and the Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands. The Forest Plan will take an ecological approach to achieve multiple-use management of the National Forest and National Grasslands. It means that we must blend the needs of people and environmental values in such a way that the National Forest and Grasslands represent diverse, healthy, productive, and sustainable ecosystems. The present Cibola National Forest Plan was approved in 1985 and has been amended six times since then. Revision of a forest plan should occur about every 10 years, but no later than 15 years, from the date of approval of the original plan or the latest plan revision. Briefly stated, the following steps are taken during a forest plan revision:

(1) Prerevision review of the forest plan. The entire forest plan is reviewed to identify changed conditions and/or other new information which appear to indicate a need to change direction in the current plan.

(2) Communications Strategy. The Forest Supervisor shall formulate a communications strategy that describes how the public and government entities may participate in the prerevision and revision of the forest plan on an ongoing basis.

(3) Scoping. Upon completion of the prerevision review, the Regional Forester shall initiate the forest plan revision process by publishing a Notice of Intent to revise the forest plan and to prepare the draft environmental impact statement.

(4) Based on analysis and public comments, a draft environmental impact statement is completed.

(5) Based on analysis and public comments, a final environmental impact statement is completed with a revised forest plan.

(6) Following public comments a revised forest plan is approved.

The Communications Strategy is the tool used to guide the public participation process. The intent of the document is to list activities designed to foster ongoing participation by the public and government representatives during the entire planning process.

We are seeking comments as to which ways are most useful in order to receive and disseminate information concerning the planning process. Examples that are presently used include, but are not limited to, the following:

(1) Conduct public meetings, with adequate public notice to all interested persons, for the purpose of soliciting comments.

(2) Initiate meeting and invite the public and specific interested parties for the purpose of explaining agency proposals.

(3) Participate in one-on-one meetings to obtain individual views.

(4) Produce news releases through television, radio, newspapers.

(5) Write individual or group letters.

A copy of the draft Communications Strategy is available at the Cibola National Forest Supervisor's Office, 2113 Osuna Road NE, Suite A, Albuquerque, New Mexico 87110, 505–761–4650.

Dated: December 5, 1995.

Kenneth D. Knarr,

Acting Forest Supervisor.

[FR Doc. 95–30057 Filed 12–8–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Thursday, December 7, 1995. The purpose of the meeting is to provide orientation to new members, brief Committee members on Commission activities, discuss the current project, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Betty L. Mills, 701–223–4643, or John F. Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.
Dated at Washington, DC, .

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 95–30078 Filed 12–6–95; 1:38 pm]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 787]

IPR Pharmaceuticals, Inc., (Pharmaceutical Products), Guayama and Carolina, Puerto Rico; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Commercial and Farm Credit and Development Corporation of Puerto Rico, grantee of Foreign-Trade Zone 61, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing facilities of IPR Pharmaceuticals, Inc., in Guayama and Carolina, Puerto Rico, was filed by the Board on December 16, 1994, and notice inviting public comment was given in the Federal Register (FTZ Docket 42–94, 59 FR 66892, 12–28–94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of subzones (Subzones 61F and 61G) at the plant sites of IPR Pharmaceuticals, Inc., in Guayama and Carolina, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of November 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–30091 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 786]

Hoffmann-La Roche Inc., (Pharmaceutical Products), Freeport, TX; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Freeport, Texas, grantee of Foreign-Trade Zone 149, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing facility (vitamins and fine chemicals) of Hoffmann-La Roche Inc., in Freeport, Texas, was filed by the Board on November 29, 1994, and notice inviting public comment was given in the Federal Register (FTZ Docket 39–94, 59 FR 65752, 12–21–94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 149B) at the plant of Hoffmann-La Roche Inc., in Freeport, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of November 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–30090 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping Administrative Reviews; Time Limits; Correction to Notice of Extension of Time Limits

AGENCY: Import Administration; International Trade Administration; Department of Commerce.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. and Constitution Avenue NW., Washington DC 20230, telephone: (202) 482–0649.

CORRECTION: In the notice of extension of time limits for certain antidumping administrative reviews, published in the Federal Register on November 7, 1995 (60 FR 56141), the Department incorrectly included the review of the antidumping duty order on sulfanilic acid from the People's Republic of China; no extension of time limits for that review has been granted, and the deadlines accordingly remain May 2, 1996, for the preliminary results of review, and August 30, 1996, for the final results of review. Furthermore, the correct case number for this order is A–570–815.

This notice is published pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)).

Dated: December 4, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–30089 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–811]

Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 17, 1995, the Department of Commerce (the Department) issued the preliminary results of its 1992–94 administrative review of the antidumping duty order on steel wire rope from Korea (60 FR 14421; March 17, 1995). The review covers 25 manufacturers/exporters for the period September 30, 1992, through February 28, 1994 (the POR). We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have made changes, including corrections of certain clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for each of the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow, Davina Friedmann, Matthew Rosenbaum, or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1995, the Department published in the Federal Register the preliminary results of its 1992–94 administrative review of the antidumping duty order on steel wire rope from the Republic of Korea (60 FR 14421). There was no request for a hearing. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTS subheading 7312.10.6000. Although HTS subheadings are provided for convenience and Customs purposes, our own written description of the scope of this review is dispositive.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate for certain firms. In determining what to use as BIA, the Department employs a two-tiered methodology. In the case of respondents who do not cooperate, or who significantly impede the review, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the LTFV investigation or prior administrative reviews; or (2) the highest calculated rate in the current review for any firm. When a company substantially cooperates with our requests for information, but fails to provide all information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the current review for any firm for the class or kind of merchandise from the same country *(see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360 (June 24, 1992)). *See also Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d. 1185 (Fed. Cir. 1993) *(Allied Signal); Krupp Stahl AG et al.* v. *United States,* 822 F. Supp 789 (CIT 1993).

For a discussion of our application of BIA regarding specific firms, see comments one through five, below.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case briefs and rebuttal briefs from the petitioner, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee), and nine respondents including Boo-Kook Corp. (Boo-Kook), Chung-Woo Rope Co., Ltd. (Chung Woo), Chun Kee Steel & Wire Rope Co. Ltd. (Chun Kee), Hanboo Wire Rope, Inc. (Hanboo), Manho Rope & Wire Ltd. (Manho), Kumho Wire Rope Mfg. Co., Ltd. (Kumho), Ssang Yong Steel Wire Co., Inc. (Ssang Yong), Sungjin Company (Sungjin), and Yeonsin Metal Industrial Co., Ltd. (Yeonsin).

Comment 1: The Committee argues that the Department should not use its two-tiered methodology for establishing the BIA rate for uncooperative respondents, but instead should apply a dumping margin of 48.8 percent to these firms, as calculated by the Committee. Referring to its letter of November 15, 1994, the Committee urges the Department to establish a rate reflective of POR costs and values based on a comparison of the constructed value of Korean steel wire rope and the U.S. price of Korean wire rope. It claims that the U.S. price of steel wire rope from Korea should be based upon an actual price quotation for sales to the United States.

The Committee cites, in support of that proposition, *Sodium Thiosulfate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 59 FR 12934 (March 8, 1993) (*Sodium Thiosulfate from China*). The Committee asserts that, in that review, the Department used a BIA rate premised upon petitioner-supplied information because the petitioner demonstrated that costs and prices in the relevant industry had changed substantially since the original investigation. The Committee argues that substantial evidence indicates that Korean wire rope producers' raw material costs increased dramatically over the POR, while the U.S. price of Korean imports of carbon steel wire rope declined. The Committee also cites a decision by the Court of Appeals for the Federal Circuit that states that first-tier BIA ''merely establishes a presumption that the highest prior margins are the best information available'' (*Allied-Signal* at 1185 and 1187). The Committee argues that the presumption may be rebutted with evidence which included ''all information that is accessible or may be obtained, whatever its sources,'' citing *Timken Co.* v. *United States,* 11 CIT 786, 673 F. Supp. 495, 500 (October 29, 1987).

In further support of its position, the Committee refers to *Silicon Metal From Argentina: Final Results of Antidumping Duty Administrative Review,* 58 FR 65336, 65337 (December 14, 1993) (*Silicon Metal from Argentina*). The Committee argues that, in that decision, the Department reiterated its position and explained that the BIA provision of the statute

ensures that the antidumping duties assessed are not less than the actual amounts might have been, had the Department received full and accurate information. The Committee concludes that a respondent should not find itself in a better position as a result of its noncompliance than it would have had it provided the Department with complete, accurate and timely data. The Committee argues that respondents are likely to not submit any information to the Department after considering the low dumping margin established in *Steel Wire Rope from Korea: Final Determination of Sales at Less Than Fair Value*, 58 FR 11029, 11032 (February 23, 1993) (*LTFV Final Determination*), and the possibility that the margins calculated in the review will also be low. It states that the Court of International Trade has affirmed the appropriateness of the Department's use of information from other sources. The Committee quotes the Court as saying that BIA ''is not necessarily accurate information, it is information which becomes usable because the respondent has failed to provide accurate information,'' citing *Asociacion Colombiana de Exportadores de Flores v. United States*, 13 CIT 13, 28, 704 F. Supp. 1114, 1126.

Boo-Kook responds by arguing that the purpose of BIA is to set an accurate assessment of current dumping margins. Since there are eight respondents in this review and three companies in the *LTFV Final Determination* for which the Department calculated individual dumping margins, Boo-Kook asserts that the verified data of the companies for which the Department calculated dumping margins should be the most accurate assessment of current dumping margins.

Department's Position: We disagree with the Committee and find that reliance on petitioner-supplied data as a basis for BIA would be inappropriate in the context of this review. The Department has broad discretion in determining what constitutes BIA in a given situation. *Krupp Stahl* at 792; *see also Allied Signal* at 1191: ''[b]ecause Congress has 'explicitly left a gap for the agency to fill' in determining what constitutes the best information available, the ITA's construction of the statute must be accorded considerable deference,'' citing *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 833–44 (1984). The Department's two-tiered BIA methodology has been upheld as ''a reasonable and permissible exercise of the ITA's statutory authority to use the best information available when a respondent refuses or is unable to provide requested information.'' *Allied Signal* at 1192.

The Department has used the two-tiered methodology in the vast majority of cases involving the application of BIA to non-responsive companies since the adoption of this approach in the first administrative review of *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, et al.: Final Results of Antidumping Duty Administrative Reviews* (56 FR 31692, 31705 (July 11, 1991)). In such cases we have been satisfied that the two-tiered methodology effectuates the purpose of the BIA provision of the Act, which is to encourage compliance in our reviews.

In any given review, a respondent will have knowledge of the antidumping rates from the investigation and past reviews but not of the rates that will be established in the ongoing review. Because the two-tiered approach incorporates the highest rate from the current review as one source of BIA, potentially uncooperative respondents will generally be less able to predict their BIA rate as the number of participants in the ongoing review increases. Thus the two-tiered methodology induces respondents to participate and receive their own known rates as opposed to a potentially much higher unknown rate. Therefore in most cases the BIA selection pursuant to the two-tiered methodology satisfies the cooperation-inducing function of the BIA provision. However, the Department recognizes that there are instances in which the BIA resulting from the two-tiered methodology may not induce respondents to cooperate. The rare cases in which we have not relied on this approach have involved an extremely limited number of participants, and a consequent small number of rates available for use as BIA. For instance, in *Sodium Thiosulfate*, we used information supplied by the petitioner to establish the BIA rate for the one respondent that had shipments of subject merchandise during the POR. Similarly, in *Silicon Metal*, we resorted to petitioner-supplied data where we had a calculated rate for only one firm: ''[i]n this instance, we have only Andina's rate from the LTFV investigation * * *. Because Andina's rate is also the 'all other' rate, Silarsa would be assured a rate no higher than Andina's, *the only respondent who cooperated fully with the Department in this administrative review*. The use of the two-tier methodology, *in this instance*, restricts the field of potential BIA rates *to the rate established for one firm*.'' *Silicon Metal*, 58 FR 65336, at 65337 (December 14, 1993) (emphasis added). The concern in such cases with respect to the two-tiered methodology is that the lack of past rates, as well as the small number of participants in the current review, could allow a respondent in such a review to manipulate the proceeding by choosing not to comply with our requests for information. In such cases the cooperation-inducing function of the BIA provision of the Act may not be achieved by use of the two-tiered BIA methodology, in which case the Department will resort to alternatives sources in determining the BIA rate for uncooperative respondents.

The cases cited by the Committee thus establish only that we will consider, on a case-by-case basis as appropriate, petitioner-supplied data in situations involving a number of calculated rates insufficient to provide an adequate indication of the best information available and to induce cooperation by respondents in the proceeding. In those cases, we did not have rates for more than one company and therefore determined that use of a BIA rate outside our two-tiered methodology was appropriate to encourage future cooperation.

Our recent determination in *Certain Malleable Cast Iron Pipe Fittings from Brazil; Final Results of Antidumping Duty Administrative Review* is a further example of a situation in which the circumstances of the case clearly demonstrated that the two-tiered BIA selection was not sufficient to induce the respondent to cooperate. In *Pipe Fittings*, we applied a petition- based BIA rate to a non-responsive company that was the only company to have ever been investigated or reviewed: ''[we] have only calculated one margin, which was in the less-than- fair-value (LTFV) investigation. Due to the unusual situation, we have determined to use as BIA the simple average of the rates from the petition * * *. In not responding to our requests for information, Tupy could be relying upon our normal BIA practice to lock in a rate that is capped at its LTFV rate.'' *Pipe Fittings*, 60 FR 41876, 41877–78 (August 14, 1995).

Given the number of rates and respondents involved in both the LTFV investigation and in this review, the concern over potential manipulation of antidumping rates cited in *Sodium Thiosulfate, Silicon Metal*, and *Pipe Fittings* does not exist in the present case, wherein we have calculated rates from three companies in the LTFV final determination and eight companies in this review. We are satisfied that selection of the highest of these rates is appropriate for BIA for this review, is consistent with our practice, and

effectuates the cooperation-inducing purpose of the BIA rule.

Comment 2: The Committee contends that Boo-Kook should be treated as an uncooperative respondent in this review and receive a dumping margin based on the best information available (BIA). It argues that Boo-Kook was uncooperative since it did not respond to the Department's cost of production (COP) questionnaire and canceled the scheduled verification. The Committee states that the Department was unable to substantiate the information submitted by Boo-Kook since the Department did not verify the sales questionnaire response. Further, the Committee claims that the Department has determined that a company which does not permit verification of its response to the sales questionnaire and does not respond to the COP questionnaire must be classified as an ''uncooperative'' respondent, citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Determinations of Sales at Less Than Fair Value,* 54 FR 18992, 19033 (May 3, 1989) (*AFBs from Germany*).

In response, Boo-Kook argues that it filed timely responses to the Department's initial sales questionnaire and to the supplemental questionnaires. It states that during its preparation of the sales response it discovered that it was the victim of misconduct, including embezzlement, by the company's former chief director and the company's accountant. Due to these circumstances, Boo-Kook contends that key records were unavailable to it. Boo-Kook maintains that some of the key records were missing and it assumes that they were destroyed by the embezzler, while others were confiscated by Korean authorities as evidence. Hence, Boo-Kook argues that it was unable to undergo verification or respond to the COP questionnaire. It states further that the uncooperative (first-tier) BIA rate is intended to induce foreign manufacturers to respond and that Boo-Kook did respond to the best of its ability.

Department's Position: We agree with Boo-Kook. Boo-Kook submitted a timely response to our original and supplemental sales questionnaires. Before its cost response was due and before the verification, Boo-Kook informed us that a former president and the present chief accountant had been arrested and prosecuted for embezzlement. Boo-Kook indicated that it hoped to recover missing records and be able to respond to the cost questionnaire in 90 days.

In addition, Boo-Kook also requested that we postpone the verification for 60 to 90 days. In *Allied Signal,* the U.S. Court of Appeals ruled that ''[i]n order to apply the first tier [BIA] to a particular respondent, the ITA must conclude that the respondent 'refused to cooperate with the ITA or otherwise significantly impeded' the review. However, if the respondent 'substantially cooperated * * * but failed to provide the information in a timely manner or in the format required,' the second tier (cooperative rate) is applicable.'' (At 1192). The court concluded, in that case, that, because respondent supplied as much of the requested information as it could and offered to provide the remaining information in a simplified form, it was unreasonable for the Department to have characterized respondent's behavior as a refusal to cooperate. Therefore, because Boo-Kook cooperated with the Department to the best of its ability, and given the unusual and extenuating circumstances, we have applied second-tier total BIA to Boo-Kook's U.S. sales.

Comment 3: The Committee contends that the Department's preliminary results regarding Jinyang Wire Rope (Jinyang), Korope Co. (Korope), and Sungsan Special Steel Processing Inc. (Sungsan) were erroneous. It states that the Department incorrectly applied a zero dumping margin to the companies based on the companies' claims that they had no shipments or sales of subject merchandise during the POR. The Committee states further that the Department must classify Jinyang and Korope as uncooperative respondents because their submissions were not submitted according to the Department's regulations. It claims that it was never served with submissions from Jinyang and Korope. Petitioner argues that it has seen in the public file a copy of a letter from the Department to Jinyang that refers to a June 22, 1994 letter from Jinyang and a copy of a letter from the Department referring to a July 28, 1994 letter from Korope. In these letters, the Committee further argues, the Department asked Jinyang and Korope to resubmit their letters. Since the companies neglected to do so, the petitioner believes that the Department should consider them to be uncooperative respondents and apply the first-tier BIA rate to their U.S. sales.

The Committee acknowledges that Sungsan submitted a letter on the file indicating that it sold subject merchandise during the POR that was not manufactured by Sungsan. However, the Committee notes, the Department then sent Sungsan a letter, asking it to demonstrate that the manufacturer had knowledge of the ultimate destination of the merchandise. The Committee states that Sungsan failed to respond to the above-mentioned inquiry and thus should also be treated as an uncooperative respondent and receive the first-tier BIA rate.

Department's Position: We agree with the Committee regarding Jinyang and Korope and we disagree regarding Sungsan. Sungsan submitted for the record on August 5, 1994, a letter and attachment indicating that the supplier of the steel wire rope that it shipped to the United States during the POR was aware at the time of purchase that the product was destined to the United States. The attached invoice from the supplier to Sungsan indicates the destination as the United States. Therefore, we have sufficient evidence on the record that the only shipments of subject merchandise that Sungsan made to the United States during the POR were manufactured by a supplier that had knowledge that the product was destined to the United States. Hence, we have not applied BIA to Sungsan's shipments.

Neither Jinyang nor Korope properly submitted a response to our original questionnaire. In accordance with section 777(d) of the Tariff Act, we do not accept documents that are not served on all interested parties. In addition, section 777(e) of the Tariff Act states that all submissions shall be submitted in a timely manner. Jinyang submitted a letter, but did not serve it upon interested parties. Because Jinyang did not serve interested parties, we have rejected Jinyang's response and we have applied first-tier BIA to its sales of subject merchandise to the United States. Korope submitted a late response which it also did not serve upon interested parties. Therefore, we have rejected Korope's submission and have applied first-tier BIA to Korope.

Comment 4: The Committee argues that Atlantic and Pacific, Dong-Il Metal, Dong Yong Rope, Kwang Shin Industries and Seo Hae Industrial (Seo Hae), which the Department classified as ''unlocated companies,'' should be assigned a BIA rate. It argues that the Department provided no indication of whether these five companies remain functioning entities or what efforts the Department took to locate them. Further, it states that, for Dong-Il Metal, the address was set forth on the service list for this administrative review. The Committee argues that, in the absence of verified information, the Department must determine that these companies are still functioning entities and that they have refused to cooperate or have significantly impeded this proceeding

and should be treated as uncooperative respondents.

Department's Position: We disagree with the Committee and have assigned the ''All Others'' rate to the unlocated companies. The U.S. Embassy in Seoul, Korea, provided us with information for each company and their response to our inquiry is in the public file. The Embassy confirmed, with help from the Korea Iron and Steel Association, that Atlantic and Pacific was bankrupt, Seo Hae was closed, and Kwang Shin Industries was closed. None of these companies had forwarding addresses. The Embassy initially provided us with addresses for Dong-Il metal and Dong Yong and we sent them questionnaires. We did not receive responses from these companies and later the questionnaires for these companies were returned by the U.S. Postal Service as undeliverable. Also, upon further inquiry, we learned through the Embassy that Dong Yong Rope and Dong-Il Metal were closed. We are not applying BIA to these companies because we use BIA as an adverse assumption for companies that have refused to cooperate in the Department's solicitation or verification of information. Therefore, we are continuing to classify these companies as ''unlocated companies,'' and are assigning them the ''All Others'' rate.

Comment 5: The Committee states that, because the Department did not verify Chun Kee's COP information, it must use constructed value in the calculation of the foreign market value for Chun Kee. The Committee contends that the Department was obligated to verify Chun Kee's COP response under the statute and the Department's regulations. Further, it argues that Chun Kee's constructed value information cannot be relied upon without a cost verification. Therefore, the Committee asserts, the Department should base its calculation on information submitted in the Committee's original petition, dated November 15, 1994, which constitutes BIA.

Chun Kee responds by stating that it was fully cooperative and provided all of the cost information as requested. Further, it was ready, willing, and able to substantiate its cost information through verification. It cites *Olympic Adhesives* v. *United States,* 889 F.2d 1565, 1574 (Fed. Cir. 1990), to argue that the Department may not make adverse inferences unless a respondent refuses or is unable to provide information requested by the Department. Further, Chun Kee argues that the Committee's request for a verification was untimely and in any case there was not good cause for verification. Further, even if the Department should have verified the COP information, Chun Kee asserts that there would still not be a basis for making adverse inferences against it.

Department's Position: We agree with Chun Kee. Although the Committee cites 19 CFR 353.36(a)(1)(v) in arguing that we were required to verify Chun Kee's submitted information, the statute and regulations state that we will verify all factual information submitted if no verification was conducted during either of the two immediately preceding administrative reviews. Section 776(b)(3)(B) of the Act. See also 19 CFR 353.36(a)(v)(B). Since this is only the first administrative review, and no information has been placed on the record indicating that Chun Kee's response is inaccurate, we are not obligated to verify any responses. Hence, we have used the cost information Chun Kee submitted in this review.

Comment 6: The Committee asserts that the Department should reject the claimed circumstance-of-sale (COS) adjustment to foreign market value for Chun Kee, Chung Woo, and Manho regarding home market credit expenses. The Committee argues that these three respondents' calculations for credit expenses are incorrect because they used the total value of home market sales, including non-subject merchandise, and divided this amount by the total accounts receivable balance. The Committee asserts that these calculations must include non- subject merchandise since the total sales values of subject merchandise for each firm vary from the figures in the credit expense calculations. The Committee argues that the Department has only allowed such an adjustment when the calculations are exclusive of non-subject merchandise, citing *AFBs from Germany* and *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate File, Sheet, and Strip from the Republic of Korea,* 56 FR 16305, 16310 (April 22, 1991) (*Pet Film from Korea*).

All three respondents argue that they provided their home market imputed credit expenses in accordance with well-established Department policy. They argue further that the Department never asked any of the respondents to revise their methodology, nor did the petitioner urge the respondents to do so during the course of the review. They cite *Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to Length Carbon Steel Plate from Korea,* 58 FR 37176, 37184 (July 9, 1993) (*Carbon Steel Flat Products from Korea*), in which the Department accepted credit expenses where company-wide credit periods were used to calculate credit. They also state that, for Chun Kee, Chung Woo, and Manho, the Department verified their methodology and found no discrepancies. They state that, while the calculation included data on non-subject merchandise, there is no difference between the payment terms for subject and non-subject merchandise, nor do terms of payment under the respondents' open accounting system recognize a difference between subject and non-subject merchandise. Due to the similarities among all of the products they sold and the similarities of the payment, the respondents claim that there is no business reason to maintain different accounts based on different types of merchandise, and the payment methods do not even allow it. Hence, respondents argue, they could not possibly provide information that does not exist in their accounting records. Further, the respondents claim that their case is not analogous to the cases petitioner cites since, in *AFBs from Germany,* by including sales of non-subject merchandise in the turnover rate calculation, the respondent distorted the actual average credit period of the subject merchandise. In addition, the respondents assert, at verification in *AFBs from Germany,* the Department found that the average credit period for the subject merchandise was much less than the respondent had originally reported. Chun Kee, Chung Woo and Manho argue that there is no indication that the inclusion of non-subject merchandise in their calculations of the turnover period distorts the credit calculation. Further, respondents claim that, in *Pet Film from Korea,* the Department accepted a respondent's company-wide turnover calculation. Respondents claim that the only difference between Pet Film from Korea and the present review is that in the present case the accounts receivable balances for subject and non-subject merchandise cannot be separated. Therefore, respondents argue, the Department should accept their company-wide turnover calculations.

Department's Position: We disagree with the Committee and have not changed our adjustment for home market credit expenses. In *AFBs from Germany,* as cited by the Committee, we rejected the respondent's calculation of home market credit expenses because its calculation distorted the actual average credit period on the products under investigation and we discovered that the average credit period on sales of subject

merchandise in the home market was consistently much less than respondent had originally reported. In *Pet Film from Korea,* we accepted respondent's reported home market credit expenses and at verification we calculated all balances exclusive of non-subject merchandise. In that case, we also indicated that reliance on an average collection period method to determine home market credit expense is reasonable.

At verification of Chun Kee, Chung Woo, and Manho, we verified the amounts of total sales and receivables and found no discrepancies and have no reason to believe that the inclusion of sales not under review distorted the actual average credit period on the products under review. Moreover, it has been our practice to accept such calculations where we are satisfied that a company has provided us reasonable information, given its normal record-keeping system. *See Carbon Steel Flat Products from Korea.* Therefore, we are accepting Chun Kee's, Chung Woo's, and Manho's calculations of home market credit expenses.

Comment 7: The Committee argues that six respondents incorrectly calculated the turnover ratio in their calculations of imputed credit by including value added tax (VAT) in the accounts receivable (AR) balance and the total home market sales amount. The Committee argues that the Department should revise the home market credit expenses for these respondents by excluding VAT. The Committee cites Pet Film from Korea and argues that the Department determined in that case that an adjustment for VAT payments was not warranted when the respondent did not pay the VAT to the government at the time of sale, but instead maintained a rolling account. Citing the *LTFV Final Determination* at 11032 for this case, the Committee asserts that the Department determined that the calculation of home market credit expenses inclusive of VAT was erroneous.

Respondents claim that they included the VAT both in the numerator and the denominator in the calculation of the turnover ratio, resulting in an ''apples-to-apples'' ratio and the same results would be achieved by excluding VAT from total home market sales and the AR balance. They also argue that VAT is part of the actual sales price respondents charged to their customers and, therefore, they should receive an imputed credit expense on the VAT. They claim that removing the VAT would be equivalent to removing the profit from the sales price. They cite *Color Television Receivers from Korea: Final Results of Antidumping Duty Determination,* 51 FR 41365 (November 14, 1986), to support their position that respondents justifiably may include VAT in their total sale price when calculating credit expense.

Department's Position: We disagree with the Committee concerning exclusion of VAT from the turnover ratio calculation. The respondents calculated the turnover rates reasonably, including VAT in the AR balance and the total home market sales amount, and, because VAT is included in both the denominator and the numerator of the turnover ratio, the resulting figure is not distorted. However, we agree with the Committee concerning the adjustment to FMV for the imputed VAT credit expenses. We find that there is no statutory or regulatory requirement for making the proposed adjustment. While we recognize that there may be a potential opportunity cost associated with the respondents' prepayment of the VAT, this fact is not sufficient for us to make an adjustment in price-to-price comparisons. Most charges or expenses associated with price-to-price comparisons are either prepaid or paid for at some point after the cost is incurred and they may each involve an opportunity cost or gain. Therefore, to allow an adjustment for the VAT in this case would imply that we make adjustments for every charge and expense reported by the respondents. Such an exercise would make our dumping calculations inordinately complicated, placing an unreasonable and onerous burden on both respondents and the Department (*see LTFV Final Determination at 11032*). Therefore, we have changed the final results and adjusted the credit expense to not include VAT for the final results, and we have not adjusted the potential opportunity cost related to each expense.

Comment 8: The Committee asserts that the Department must revise its calculations of the addition to United States price (USP) for Korean VAT. Although the Department stated that it had applied its methodology from *Silicomanganese from Venezuela: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 59 FR 31204 (June 17, 1994) (*Silicomanganese from Venezuela*), the Committee asserts that, for some respondents, the Department's calculations in this case contradicted *Silicomanganese from Venezuela.* The committee claims that, although the Department stated in *Silicomanganese from Venezuela* that the addition to USP should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales, in the preliminary results the Department performed the VAT adjustment to the net unit price of subject merchandise, which includes an adjustment for duty drawback. The Committee argues that the addition of the amount for duty drawback to the base price against which the Department applied VAT was inconsistent with earlier determinations. In the Committee's view, the Department should not apply VAT to the duty drawback adjustment because respondents do not receive duty drawback on sales in the home market. Therefore, the Committee argues, to apply a VAT adjustment after adjusting USP for duty drawback ignores the importance of applying VAT at an analogous point in the chain of commerce. In addition, the Committee argues that the Department must limit the VAT adjustment to the USP at the absolute level of the VAT adjustment it applies to the home market price of the subject merchandise.

Respondents argue that the Court of International Trade has upheld the Department's decision to include duty drawback in the USP base to calculate the VAT adjustment in *Avesta Sheffield* v. *United States,* Court No. 93–01–00062, Slip Op. 94–53 (1994). They state that the Department, in that case, argued that it includes duty drawback in the U.S. base to avoid the creation of fictitious margins. Respondents argue that the cases the Committee cites are not relevant here and that they simply explain that the tax base for the U.S. sale should be calculated by applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to the foreign market sale. The respondents interpret Section 772(d)(1)(B) of the Tariff Act to mean that USP is comparable to the home market price only when duty drawback is added to USP, since this is the price which is comparable to the home market price. Concerning the Committee's proposed limit on the VAT adjustment, the respondents argue that the CIT presently requires the Department to apply the home market tax rate to a U.S. tax base that is appropriately adjusted rather than adjusting for the absolute amount of the foreign tax. They further argue that it is not appropriate to limit the adjustment under the new methodology in which the Department applies the home market tax rate to the USP citing *Zenith Electronics. Corp.* v. *United*

States, Consol. Ct. No. 88–07–00488, Slip op. 95–38 (1995). The respondents also cite *Zenith Electronic. Corp.* v. *United States,* 10 CIT 268, 633 F. Supp. 1382 (1986), to argue that the Department's prior methodology is no longer applicable.

Department's Position: In light of the Federal Circuit's decision in *Federal Mogul* v. *United States,* CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States,* 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT. Accordingly, in the final results, we have not applied VAT to the adjustments for duty drawback.

Comment 9: Chung Woo, Hanboo, Kumho, Ssang Yong, Sungjin and Yeonsin disagree with the Department's decision not to adjust USP for duty drawback. They argue that it was inappropriate to deny the adjustment simply because the respondents used the ''simplified fixed amount duty drawback application'' method. Respondents argue that this method, in which the Korean Customs Authority determines and refunds duty drawback using a percentage of the export dollar amount, reflects the Korean government's analysis of the average drawback amounts given for particular products under the individual method (which refunds duty drawback on a product-specific basis). They cite Article 2.6 of the GATT Antidumping Code which states that ''due allowance shall be made in each case, on its merits, for the difference in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability.'' In this case, the respondents view duty drawback as a difference in taxation which affects comparability of transactions. In addition, respondents argue, the Department verified that they receive duty drawback under this simplified method.

The Committee argues that the respondents fail to meet the requirements of the Department's two-pronged test for determining whether a party is entitled to an adjustment to USP for duty drawback. Under this test, according to the Committee, a respondent must demonstrate that (1) the import duty and the rebate received under the duty drawback program are directly linked to and dependent upon one another, and (2) there were sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. The Committee claims that this has been upheld by the Court of International Trade, citing *Far East Machinery Co.* v. *United States,* 12 CIT 972, 699 F. Supp. 309 (1988), and *Carlisle Tire & Rubber Co.* v. *United States,* 11 CIT 168 (1987). The Committee argues that, in this case, the respondents received a fixed amount of duty drawback based on the export dollar amount and did not demonstrate that the drawback amounts they received were contingent upon the weight and value of imported raw materials incorporated in the exported merchandise. The Committee cites section 772(a)(1)(B) of the Tariff Act to support its view that USP must be increased by ''the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.'' In this case, the Committee claims, the Department is left without means for determining the amount of any import duties rebated on particular export shipments because respondents received duty drawback under the simplified method.

Department's Position: We agree with the Committee. As we stated in the preliminary results, we did not adjust USP for duty drawback for respondents that reported using the simplified method. Under this method, the respondents were unable to demonstrate a connection between imports for which they paid duties and exports of steel wire rope. The second prong of our two-pronged test requires sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product (*see Fourth Review of AFBs*): ''[t]he second prong requires the foreign producer to show that it imported a sufficient amount of raw materials (upon which it paid import duties) to account for the exports, based on which it claimed rebates.'' In its supplemental questionnaire response of December 19, 1994, Sungjin stated that it is not required to demonstrate to the Korean government that the product it exports contains the actual imported product. All of the respondents clearly stated in their questionnaire responses that the

Korean government determines the drawback amount using its calculation of the amount of duty each importer paid on average. Hence, although respondents do not have to tie their imports to the exports in order to receive duty drawback from the Korean government, this average drawback approach does not satisfy the second prong of our duty drawback test. Although we verified that respondents received duty drawback under the simplified method, an adjustment to USP to determine the amount of dumping of a specific product might be distorted if that adjustment has not been calculated on a product-specific basis. Therefore, we have not adjusted USP for duty drawback where the respondents used the simplified method.

Comment 10: Ssang Yong asserts that the Department failed to adjust its USP for drawback it received using the individual drawback system. Ssang Yong further states that it received duty drawback under the individual method and the simplified method. Ssang Yong states that the Department verified its records for drawback and, citing the verification report, was satisfied that there were no discrepancies. Ssang Yong requests that the Department adjust USP for duty drawback in the cases where it was received under the individual drawback system.

Department's Position: We are satisfied that Ssang Yong's calculation of duty drawback under the individual method, as calculated during a portion of the POR, meets our test and have adjusted USP for duty drawback where appropriate.

Comment 11: Chun Kee asserts that the Department calculated the VAT tax twice on its home market sales by multiplying the net home market price (NETPRIH) by the VAT rate, and by multiplying the final foreign market value (FUPDOL), which the Department derives from NETPRIH, by the VAT rate later in the calculations. Chun Kee states that all positive and negative adjustments to the gross unit price must be multiplied by the VAT rate, but argues that the Department's calculations inflate the entire net price by applying the VAT rate twice.

The Committee responds, that, according to the Analysis Memorandum for Chun Kee, all positive and negative adjustments to the gross unit price must be multiplied by the VAT rate. The Committee further claims that first the Department performs the VAT adjustment with respect to negative adjustments and, later in the calculations, performs the adjustment with respect to the positive adjustments, and, hence, there was no double-counting of the VAT rate.

Department's Position: We agree with Chun Kee that we made a ministerial error. However, for the final results we have made tax adjustments based on our new methodology. See comment eight above.

Comment 12: Chun Kee and Manho contend that, in a number of cases, they provided similar home market matches for U.S. sales, but the Department calculated constructed value to determine the dumping margin. They explain that this occurs in the model match portion of the Department's program. Respondents suggest that, because the Department's program retains only the first occurrence of each home market model that matches a U.S. sale, even though a home market model may be comparable to more than one U.S. model, subsequent U.S. sales cannot find a match and, therefore, the Department relied on constructed value. They recommend that one way to correct this would be to ensure that every U.S. sale which does not have an identical home market match, has a home market control number attached to the observation so that a merge of databases and information can occur when appropriate.

Department's Position: We agree with respondents and have ensured that, where appropriate, each U.S. sale is matched to a home market model.

Comment 13: Chun Kee claims that the Department inadvertently added home market packing to FMV instead of subtracting the expense. It claims that this had a very large impact on FMV and provides an example of the effect of this error.

The Committee argues that Chun Kee's explanation of the error is incorrect and that the Department's calculation of FMV is correct.

Department's Position: We agree with Chun Kee and have corrected this ministerial error. In our calculations for Chun Kee we inadvertently inserted a minus sign twice, which had the effect of adding packing instead of subtracting it. We have corrected this by deleting one of the minus signs.

Comment 14: Chun Kee claims that the Department failed to subtract home market inspection fees and rebates from the home market net price in its calculations.

Department's Position: We agree with Chun Kee and have corrected this ministerial error.

Comment 15: Chun Kee and Manho assert that major errors exist in the COP portion of the Department's calculations which affect the integrity of the COP test. Respondents request that the Department correct these errors for the final results.

Department's Position: We agree with Chun Kee and Manho. We have corrected the error.

Comment 16: Chun Kee asserts that the Department neglected to apply the 90/60 day contemporaneity guideline for finding home market sales matches. It claims further that the Department's calculations relied only on home market sales in the same month as the U.S. sale, and, instead of examining the 90/60 window for home market sales, the Department relied on constructed value to determine FMV.

Department's Position: We agree with Chun Kee and have applied our 90/60 day contemporaneity guideline in our calculations for Chun Kee.

Comment 17: Chun Kee claims that the Department failed to incorporate the corrections which Chun Kee submitted in attachment 13 of its supplemental questionnaire response. Chun Kee requests that the Department reflect these corrections in the final results.

Department's Position: We agree with Chun Kee and have made these corrections.

Comment 18: Manho claims that the Department mistakenly added U.S. packing to the FMV, even though the calculations for constructed value contains U.S. packing costs. Respondent requests that the Department correct this double-counting error.

Department's Position: We agree with Manho and have corrected this ministerial error.

Comment 19: Manho claims that the Department incorrectly subtracted duty drawback from USP rather than adding it, as the statute requires. Manho requests that the Department correct this error.

Department's Position: We agree with Manho and have corrected this ministerial error.

Final Results of Review

We determine the following percentage weighted-average margins exist for the period September 30, 1992, through February 28, 1994:

Manufacturer/exporter	Margin (percent)
Atlantic & Pacific	1.51
Boo Kook Corporation	1.51
Chun Kee Steel & Wire Rope Co., Ltd.	0.20
Chung Woo Rope Co., Ltd	0.14
Dae Heung Industrial Co	(1)
Dae Kyung Metal	1.51
Dong-Il Metal	1.51
Dong-Il Steel Manufacturing Co., Ltd	1.51
Dong Young	1.51

Manufacturer/exporter	Margin (percent)
Hanboo Wire Rope, Inc	0.51
Jinyang Wire Rope, Inc	1.51
Korea Sangsa Co	(1)
Korope Co	1.51
Kumho Rope	0.01
Kwang Shin Ind.	1.51
Kwangshin Rope	1.51
Manho Rope & Wire, Ltd	0.00
Myung Jin Co	1.51
Seo Hae Ind	1.51
Seo Jin Rope	1.51
Ssang Yong Steel Wire Co., Ltd	0.06
Sung Jin	0.04
Sungsan Special Steel Processing Inc	(1)
TSK (Korea) Co., Ltd	(1)
Yeonsin Metal	0.18

[1] No shipments or sales subject to this review.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established above (except that if the rate for a firm is *de minimis, i.e.,* less than 0.5 percent, a cash deposit of zero will be required for that firm); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 1.51 percent, the ''All Others'' rate established in the *LTFV Final Determination* (58 FR 11029).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 4, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30088 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–DS–P

North American Free Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review of the final determination made by the U.S. International Trade Administration, in an affirmative countervailing duty administrative review respecting live swine from Canada, Secretariat File No. USA–94–1904–01.

SUMMARY: Pursuant to the Order of the Binational Panel dated September 27, 1995, affirming the final determination described above was completed on November 13, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On September 27, 1995, the Binational Panel issued an order which affirmed the final affirmative countervailing duty administrative review of the United States International Trade Administration (''ITA'') concerning Live Swine from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no Request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists discharged from their duties effective November 13, 1995.

Dated: December 1, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–30093 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–GT–M

North American Free Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review of the final determination made by the U.S. International Trade Administration, in an affirmative countervailing duty administrative review respecting leather wearing apparel from Mexico, Secretariat File No. USA–94–1904–02.

SUMMARY: Pursuant to the Order of the Binational Panel dated October 20, 1995, affirming the final redetermination on remand described above was completed on December 1, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On October 20, 1995, the Binational Panel Issued an Order which affirmed the final affirmative countervailing duty administrative review redetermination on remand of the United States International Trade Administration (''ITA'') concerning Leather wearing Apparel from Mexico. The Secretariat was instructed to issue a Notice of

Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no Request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective December 1, 1995.

Dated: December 1, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–30094 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Monitor National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to issue a special use permit; request for applications for special use permit; request for comments.

SUMMARY: This is a public notice of intent to issue, and a request for applications for a special use permit to conduct non-research diving at the Monitor National Marine Sanctuary (MNMS). Public comments are invited. Since 1975, NOAA has protected and preserved the wreck of the USS Monitor as a significant historical resource by restricting physical access except for research expeditions. NOAA recognizes that changes in dive technology and experience in the dive community have resulted in a growing public interest to dive at this site. In 1994, NOAA issued a special use permit, on a trial basis, which authorized a concessionaire to conduct non-research dives over a two-week period. Upon evaluation of activities conducted under the 1994 permit, NOAA has determined to issue a three-year special use permit to a qualified dive concessionaire, selected competitively, for non-intrusive dives at this site for a total of two (2) weeks (14 days) each year. Because any touching of the Monitor or its debris field will be prohibited, NOAA expects that no disruption or harm will occur at the site from dive activities. NOAA will continue to review this activity, evaluate impacts to the Monitor, if any, and assess whether to issue subsequent special use permits.

DATES: Applications must be submitted no later than February 9, 1996. Public comments must be received by February 9, 1996. Applicants will be notified as to the disposition of their applications by March 11, 1996.

ADDRESSES: All applications for a special use permit and comments on this notice must be sent to: John Broadwater, Manager, Monitor National Marine Sanctuary, NOAA/Building 1519, Fort Eustis, VA 23604. Fax: (804) 878–4619.

FOR FURTHER INFORMATION CONTACT: John Broadwater, Manager, Monitor National Marine Sanctuary, (804) 878–2973, Internet: jbroadwater@ocean.nos.noaa.gov; or Helen Golde, Sanctuaries and Reserves Division, (301) 713–3145, extension 152, Internet: hgolde@ocean.nos.noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice and request for applications is issued under the authority of the National Marine Sanctuaries Act (NMSA), as amended, 16 U.S.C. 1431 *et seq.*

II. Background

The USS Monitor was the first American ironclad turretted warship and is therefore of cultural significance to the transition from wood to metal vessels, as well as for its historic battle against the CSS Virginia (Merrimack). The Monitor was lost during a storm off Cape Hatteras, NC, on December 31, 1862. The wreck of the Monitor was located in 1973, 16.1 miles (29.8 km) south-southeast of Cape Hatteras, resting in 230 feet (70.1 m) of water. The Monitor and the water column 1 nautical mile in diameter centered on the vessel were designated as the first National Marine Sanctuary in 1975, in order to protect and preserve the Monitor from commercial salvors and souvenir collectors. The Monitor has also been designated as a National Historic Landmark.

The regulations governing the MNMS are found at 15 CFR part 924. The MNMS is the most strictly regulated sanctuary regarding public access and is the only sanctuary where any type of diving without a sanctuary permit is prohibited, primarily because it is also an archaeological research site. Alteration of the seabed risks harm of contextual information. Thus, non-research access had previously not been permitted because of the threat of harm or unauthorized removal of Monitor artifacts and the archaeological information contained by the vessel and the surrounding seabed. Private research expeditions on the Monitor have been permitted annually since 1989. Research permits have allowed access to the MNMS for research purposes while including conditions to prevent harm to the Monitor and associated artifacts. NOAA recognizes that non-research access may be conducted in a similar fashion.

1994 Special Use Permit

NOAA issued a special use permit to conduct non-research dives on a trial basis during the 1994 season. Out of 15 days scheduled for diving, dives were successfully conducted on 4 days. The canceled dives were due to adverse weather and current conditions. Typically, at Hatteras, approximately one-third of the scheduled dive days are lost due to adverse weather and/or currents. The divers who were successful in diving to the Monitor reported bottom conditions varying from fair to excellent. Participants generally agreed that they enjoyed the diving experience, but that the questionable diving conditions would negatively affect their decision to return for future dives. Dive procedures and dive safety briefings were given daily by the concessionaire. A NOAA Observer was present on the boat during all diving operations, but did not dive.

Although the NOAA observer did not dive and directly observe dive activities, based on observations of, and conversation with and among the divers, it appeared that a number of divers made contact with the wreck by diving through or under the wreck or through accidental contact due to the effects of nitrogen narcosis, strong currents and excessive amounts of gear (usually including steel tanks hanging at the divers' sides). Such incidental contact, if repeated frequently enough, would have a very adverse cumulative effect on the Monitor. The NOAA observer also noted that dive briefings were not as thorough as they should have been, primarily because they were usually conducted hastily at the dock before departure.

The 1994 dive trips were not widely advertised, partially due to the short time frame the concessionaire had to schedule the 1994 dives. Further, adverse weather and sea conditions resulted in the cancellation of dive trips. Thus, only a few divers were able to view the wreck. However, NOAA believes that the goal of increased public access was at least partially met by allowing the non-research dives under the special use permit.

Future Special Use Permits

As a result of the 1994 special use permit, the concessionaire and Sanctuary manager provided a number of recommendations for future special use permits to address the concerns raised during the 1994 dives. Consequently, based on its review of the activities conducted under the 1994 special use permit and recommendations from the Sanctuary manager, NOAA determined that it is possible to establish a viable, ongoing special use permit procedure to allow non-research dives on the Monitor. NOAA believes this can be accomplished without causing serious adverse effects to the wreck or creating an unmanageable administrative burden to NOAA, the concessionaire or the divers. NOAA will issue a three-year special use permit to a qualified dive concessionaire, selected competitively, for non-intrusive dives at this site for a total of two (2) weeks (14 days) each year. Recommendations from the Sanctuary manager based on the 1994 special use permit are reflected in the conditions outlined below, and will be further reflected in the 1996–1998 special use permit terms and conditions.

NOAA will supply the concessionaire with informational packets to be distributed to each participating diver. Each packet will provide a history of the ship, a description of the sanctuary, illustrations of the wreck as it lies on the seabed with unstable areas identified, and sanctuary regulations. In addition, prohibitions against all contact with the wreck will be specified in more detail, including specific prohibitions against entering the wreck, diving beneath the wreck and all types of disturbance including fanning the silt in or around the wreck with hands, fins or other methods. Finally, by issuing a three-year special use permit, NOAA will reduce the administrative burden and costs on the agency, the concessionaire, and the divers.

Recent research, by both private research expeditions and by NOAA, has shown that the Monitor's hull has become unstable in some areas, especially in the stern area near the propeller. During 1995, NOAA attempted to remove the Monitor's skeg and propeller in an effort to stabilize the stern, but adverse weather prevented the recovery. Another expedition is being planned for 1996. Although non-research divers will be prohibited from touching or otherwise contacting the Monitor, the special use permittee shall, in the dive safety briefings, be required to specifically advise divers to use extra caution if opting to dive near the stern area of the wreck.

III. Special Use Permit

NOAA plans to issue a special use permit pursuant to section 310 of the NMSA, 16 U.S.C. 1441, to allow non-research dives to the Monitor. Activities conducted pursuant to the special use permit will be limited to non-intrusive, non-destructive access, observation and photography of the Monitor, and must be consistent to the highest practicable degree with the preservation and conservation of the MNMS. Touching or disturbing the Monitor or its associated debris field will be prohibited.

A qualified applicant will be selected on a competitive basis and allowed to bring qualified divers to the Monitor during a 2-week period (14 days) between May and October in the three-year period 1996–1998. The two week period will be determined by NOAA in consultation with the selected permittee. Applicants are requested to include their preferred dates for the 1996 season. In addition, should the permittee be unable to conduct dives on 4 or more days of that 2-week period due to weather or environmental conditions, NOAA will attempt to accommodate the permittee by scheduling another 2-week period to conduct the remainder of the dives [Note: Due to scheduled research dives at the Monitor, which must take precedence, make-up dives may not be able to be scheduled]. No more than a total of 14 days of diving per year may be conducted under special use permit. The permittee will be authorized to conduct one trip by one vessel to the MNMS per day, during which daylight-only dive activities may be conducted. The permittee will be fully responsible for ensuring that all divers are appropriately qualified and for ensuring the safety of all divers.

At a minimum, the following conditions will be included in the special use permit:

1. The permittee may use only vessel captains that meet all applicable U.S. Coast Guard (USCG) certification and license requirements and that are appropriately certified and licensed;

2. The permittee shall provide documentation verifying that all vessel captains are (a) thoroughly familiar with the local environmental conditions at the sanctuary and (b) experienced in supporting dive operations in deep water (up to 250 feet);

3. The permittee shall use only vessels of less than 45 feet in length that meet all applicable U.S. Coast Guard (USCG) certification and license requirements and that are appropriately inspected, certified, and licensed. A low profile vessel to reduce wind drag is preferred;

4. The permittee shall carry a maximum of 18 divers each day and shall allow a maximum of 6 divers to dive at the same time;

5. The permittee shall be responsible for screening divers to ensure that they meet minimum requirements for diving skills and experience that the permittee deems necessary for making dives on the Monitor;

6. The permittee shall not anchor in the sanctuary. The permittee shall utilize the permanent mooring at the Monitor site for a diver descent/ascent line when conducting dive activities. The permittee may secure a surface float or small inflatable boat to the mooring line, but at no time may the trip vessel be secured to the permanent mooring;

7. The permittee shall not allow any dives to be made if currents at the surface are greater than one (1) knot;

8. The permittee shall ensure activities conducted in the MNMS pursuant to the special use permit are limited to non-intrusive, non-destructive access, observation and photography of the Monitor. The permittee shall ensure that all divers maintain neutral buoyancy, do not penetrate the wreck, and do not touch, otherwise contact, disturb, attempt to recover, or recover any portion of the Monitor, its associated debris field, or any artifact which may be found;

9. The permittee shall conduct a briefing for all divers before the first day of diving, as well as a briefing before each dive, these briefings must stress the importance of avoiding any contact with or disturbance of the Monitor, its associated debris field, or any artifact(s) which may be observed;

10. Upon request of the Sanctuary Manager, the permittee shall carry an individual designated by the Sanctuary Manager as an observer on board the permittee's vessel during trips to and from the MNMS and when the vessel is in the MNMS for the purpose of observing, monitoring, and documenting the activities conducted pursuant to the special use permit. The permittee shall allow the observer free and unobstructed access to all portions of the vessel at any time, and facilitate observation and documentation by the observer of all activities conducted pursuant to the special use permit. The permittee shall provide the observer all reasonable assistance to enable the observer to carry out his/her duties. (Other requirements of the permittee with respect to the observer such as advance notification of trip dates and departure times and responsibilities

regarding boarding and debarking will appear in the actual permit conditions.)

11. Pursuant to section 310 of the NMSA, the permittee shall purchase and maintain a comprehensive general liability insurance policy in an amount to be negotiated upon selection of an applicant, but not less than $100,000 plus the value of any vessel used under the special use permit. The policy shall insure against any claims that may arise from the activities conducted pursuant to the special use permit, including diver accidents and damage to the Monitor. A copy of such policy must be furnished to NOAA before conducting any activity authorized by the special use permit; and

12. Pursuant to section 310 of the NMSA, before conducting any activity under the special use permit, the permittee and all divers shall sign and furnish NOAA with a hold harmless and indemnification agreement, provided by NOAA, releasing and holding the United States harmless for any claim arising from the conduct of any activity under the special use permit and assuming the risk of harm from any such activity.

In addition, depending on the final agreement between the permittee and NOAA as to the exact role of the NOAA, observer, the permittee may also be asked to comply with the following condition:

13. The permittee shall document all activities conducted pursuant to the special use permit through the use of videotape and/or still photography, and written records. The permittee shall submit a report on all activities and copies of all photographs and videotapes taken of the activities.

Fees

The NMSA authorizes NOAA to assess fees for the costs incurred, or expected to be incurred from the review and processing of the special use permit, monitoring the permitted dive activities, and a fair market value of the use of the resources and a reasonable return to the United States. Therefore, NOAA will assess a fee for the special use permit issued pursuant to this notice. Based on the 1994 special use permit and NOAA's other experience with special use permits, the fee will be approximately (exact costs are subject to actual costs incurred): (1) $500.00 to cover the cost of reviewing and processing the application, i.e., personnel hours, copying and other overhead; (2) $200.00 per day that dives take place to cover the cost of monitoring the activity, i.e., personnel hours, equipment costs and travel expenses; and (3) 2% of the gross receipts that the permittee receives to cover the fair market value and reasonable rate of return.

IV. Application Process

All applications should be submitted to Mr. John Broadwater, Manager at the address indicated in the **ADDRESSES** section. Applications must be submitted no later than February 9, 1996. Applicants will be notified as to the disposition of their applications by March 11, 1996.

Application Format and Contents

All applications must be typed double spaced. All applications must describe in detail:

1. The methodologies that would be employed to conduct dive activities at the site, including, but not limited to, the number of trips, the number of divers per trip, type of vessel, the minimum qualifications each diver would have to meet, the dive plan, and the diver safety contingency plans in the event of an accident;

2. The experience of the applicant in organizing and running dive expeditions, including information on expeditions involving diving of this type, including the number of divers, the depth of the dives, the time of year, and environmental conditions;

3. Information and/or statement showing that the applicant has the financial capability to organize and run the activity to be conducted under the special use permit and to obtain the required insurance;

4. The applicant's plans for documenting all activities conducted pursuant to the special use permit (assume that the NOAA Observer will not be participating in dives);

5. The applicant's plans to advertise the availability of dives at the MNMS, as NOAA believes that public access should be widely publicized in the diving community; and

6. The dates that applicant prefers to conduct dive activities.

Application Review and Evaluation

All applications will be reviewed by the Sanctuaries and Reserves Division (SRD). This will include the Sanctuary Manager, the technical projects staff and the regional management staff. Outside peer reviewers may also be used.

In selecting the permittee, SRD shall consider the applicants ability to address the criteria in B, above, and: (1) The experience of the applicant for organizing and running dive expeditions involving diving of this type; (2) the applicant's financial capability; (3) the likelihood that the permittee will be able to fully comply with all permit conditions; and (4) such other factors as the SRD deems appropriate, based on review of submitted comments and information, consistent with the purposes of the NMSA.

SRD may solicit additional information from any applicant, or written clarification of an application, and may extend the solicitation period at its discretion. SRD may choose to reject all applications received at any time, re-request, or cancel this request at its discretion when in the best interest of preserving and conserving the Monitor MNMS. Any information made available to any applicant by SRD will be made available to all applicants, and will be available to the public upon request.

Once an applicant is selected, SRD shall draft and issue a special use permit incorporating as conditions the terms of this notice and the application. SRD may include additional conditions if necessary to protect the MNMS. The special use permit and application shall be subject to review by the State Historic Preservation Officer and Advisory Council on Historic Preservation pursuant to section 106 of the National Historic Preservation Act (NHPA).

NOAA considers diving to the depths of the Monitor (230 ft; 70.1 m) with compressed air to be extremely hazardous. All dive activities conducted pursuant to the special use permit are at the permittee's and each diver's own risk. The permittee is solely responsible for setting the minimum technical requirements and experience for a diver to participate in dives at the site. Further, the permittee is solely responsible for the adequacy and implementation of all diver safety requirements and the contingency plan for diver emergencies.

V. Request for Comments

NOAA requests comments and suggestions from applicants and other interested parties on: Methods to conduct safe dive activities at the Monitor site; conditions for the special use permit; methods to safeguard the wreck; the fair market value of the use of the MNMS and a reasonable return to the United States; and any other relevant information pertaining to the activities proposed to be permitted at the MNMS.

VI. Classification

This notice is not subject to review under E.O. 12866.

Prior notice and an opportunity for public comment, although voluntarily here given, are not required by the

Administrative Procedure Act or any other law because this notice concerns grants, benefits and contracts. Therefore, preparation of a Regulatory Flexibility Analysis is not required.

This action is categorically excluded from the requirements to prepare an Environmental Assessment by NOAA Directive 02–10.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Dated: December 4, 1995.

W. Stanley Wilson,

Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 95–30056 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 112995D]

Marine Mammals

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

ACTION: Modification no. 2 to scientific research permit no. 836 (P79F)

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 836 submitted by the Institute of Marine Science, University of California at Santa Cruz, Santa Cruz, California 95064 (Agents: Drs. Daniel Costa, Burney J. Le Boeuf, and Charles L. Ortiz), has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/712–3389);

Director, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

SUPPLEMENTARY INFORMATION: On August 18, 1995, notice was published in the Federal Register (60 FR 43124) that a modification of Permit No. 836, issued on May 12, 1993 (as modified June 29, 1994), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 836 authorizes, annually, the capture and handling of up to 3,880 northern elephant seals (*Mirounga angustirostris*), the unintentional killing of up to 3 elephant seals during the conduct of the authorized research activities; import up to 40 northern elephant seal and southern elephant seal (*Mirounga leonina*) tissue samples and export samples from northern elephant seals (only) from/to England, Argentina, Australia, Mexico, and Japan; and incidentally harass up to 54,400 seals.

The modification authorizes: an increase in the number of animals that may be accidentally killed annually from three to five; muscle biopsies to be taken from juvenile elephant seals to examine the muscle structure as it relates to aerobic capacity; since location of the ATOC sound source has changed; a change in the release site from Point Sur to Pioneer Seamount, approx. 70 miles west of Half Moon Bay; and, an increase the number of southern elephant seal samples to be imported from 40 to 650.

Dated: November 22, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–30063 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–22–F

National Technical Information Service

Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the ''Board'') will meet on Monday, January 8, 1996, from 9:00 a.m. to 4:00 p.m., and on Tuesday, January 9, 1996, from 9:00 a.m. to 4:00 p.m. The session on Tuesday, January 9, 1996, will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed session discussion is scheduled to begin at 9:00 a.m. and end at 4:00 p.m. on January 9, 1996. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on January 8, 1996, at 9:00 a.m. and adjourn at 4:00 p.m. and convene again on January 9, 1996, at 9:00 a.m. and adjourn at 4:00 p.m.

ADDRESSES: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation on January 8, 1996, and closed on January 9, 1996. Approximately thirty minutes will be set aside on January 8, 1996 for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 Telephone: (703) 487–4636; Fax (703) 487–4093.

Dated: December 5, 1995.

Donald R. Johnson,

Director.

[FR Doc. 95–30050 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 5, 1995.

On page 53899 of the notice published in the Federal Register on October 11, 1995, correct the 1995 adjusted limit for Category 369–S in the table of the letter to the Commissioner

of Customs from ''640,590 kilograms'' to ''640,589 kilograms.''

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–30096 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of a New Export Visa Arrangement and Certification Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk-Blend and Non-Cotton Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Colombia

December 5, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new export visa and certification requirements.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 31, 1995 representatives of the Governments of the United States and the Republic of Colombia signed an agreement to establish a new export visa arrangement and certification requirements for certain cotton, wool, man-made fiber, silk-blend and other vegetable fiber textiles and textile products, produced or manufactured in Colombia and exported from Colombia on and after November 10, 1995. Goods exported during the period November 10, 1995 through December 31, 1995 shall not be denied entry for lack of a visa or certification. All goods exported after January 1, 1996 must be accompanied by an appropriate export visa or certification. Certain merchandise shall be exempt from quota requirements.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry of certain textile products, produced or manufactured in Colombia and exported from Colombia for which the Government of the Republic of Colombia has not issued an appropriate export visa or certificate.

Facsimiles of export visa and certification stamps are on file at the U.S. Department of Commerce in Room 3100.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 45144, published on August 30, 1995; 60 FR 45145, published on August 30, 1995; 60 FR 53762, published on October 17, 1995.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989. Also see 41 FR 30707, published on July 26, 1976.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa and certification requirements set forth in the letter published below to the Commissioner of Customs.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on July 20, 1976, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in Colombia and exported from Colombia for which the Government of the Republic of Colombia has not issued an appropriate export visa or certificate.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Export Visa Arrangement dated October 31, 1995 between the Governments of the United States and the Republic of Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 6, 1995, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk-blend, and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670, and 800–899, including merged and part categories, produced or manufactured in Colombia and exported from Colombia on and after November 10, 1995 for which the Government of the Republic of Colombia has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories become subject to import quota the entire category(s) or part category(s) shall be included in the coverage of this arrangement. Goods exported during the period November 10, 1995 through December 31, 1995 shall not be denied entry for lack of a visa or certification.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Colombia is ''CO''). These first two codes shall be followed by the number ''1'' and a five-digit serial number identifying the shipment, e.g., 5CO112345.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature of the issuing official of the Government of the Republic of Colombia.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation or successor document and in the Harmonized Tariff Schedule of the United States Annotated (HTSUSA or successor documents) shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 352–510 DZ'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 352/652 may be visaed as 352/652 or if the shipment consists solely of 352 merchandise, the shipment may be visaed as ''Cat. 352,'' but not as ''Cat. 652'').

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted

and only the amount entered shall be charged to any applicable quota.

The complete name and address of the actual manufacturer of the textile product must be included on the visa document. If a textile product has been processed by more than one manufacturer, the complete name and address of the last firm to substantially transform the article into a new and different article of commerce must be listed on the visa document.

If the visa is not acceptable then a new visa must be obtained from the Government of the Republic of Colombia, or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Embassy of Colombia in Washington, DC, and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Colombia has been allowed entry into the commerce of the United States with either an incorrect category classification or misstatement of the quantity, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Each shipment of items to be exempted from the bilateral agreement shall be accompanied by a certification issued by the Government of the Republic of Colombia. The certification shall be a stamped marking in blue ink on the front of the invoice.

The Government of the Republic of Colombia will include the following information on each certification:

1. authorized signature and title of the official issuing the certification;

2. identify the items exempted;

3. date the certificate was signed and certified;

4. certificate number.

5. in the space marked ''Description'' indicate that the shipment is either ''less than $250,'' ''a cottage industry product of handloom fabric,'' or the name of the particular Colombian traditional folklore products as listed in Annex A.

An export visa will not be required for shipments of certified exempt items.

Each shipment of textile products which has been assembled in the Republic of Colombia wholly from components cut in the United States from U.S. formed fabric which are subject to the Andean Special Access Textile Program as set out in the Agreement shall be so certified by the Government of the Republic of Colombia. This certification shall be presented to the U.S. Customs Service before entry, or withdrawal from warehouse for consumption, into the customs territory of the United States (the 50 states and Puerto Rico).

Each shipment shall be certified by the stamping of the original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. The original copy of the invoice with the original certification will be required in order to enter the shipment into the United States. Duplicate copies of the invoice and/or certification may not be used.

Each certification shall include the following information:

1. The certification number. The certification number shall be nine digits and letters. It shall begin with one digit for the last digit of the year of export followed by the two character country code for Colombia, which is ''CO.'' These first two codes shall be followed by the number ''2'' and a five-digit serial number identifying the shipment, e.g., 5CO212345.

2. The date of issuance. The date of issuance shall be the day, month and year in which the visa was issued.

3. The original signature of the issuing official of the Government of the Republic of Colombia.

4. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States Annotated (HTSUSA or successor documents) shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 352-510 DZ'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 352/652 may be visaed as 352/652 or if the shipment consists solely of 352 merchandise, the shipment may be visaed as ''Cat. 352,'' but not as ''Cat. 652'').

U.S. Customs shall not permit entry if the shipment does not have a certification number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the certification is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the certification is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

Entry of textile products subject to the certification system outlined above into the customs territory of the United States will be permitted only for those shipments accompanied by:

1. A valid certification by the Government of the Republic of Colombia.

2. A completed copy of form ITA–370P or successor document with a proper declaration by the Colombian assembler that the articles were subject to assembly in Colombia from parts described on that declaration; and

3. A proper importer's declaration.

Any shipment which is not accompanied by a valid and correct certification in accordance with the foregoing provisions shall be denied entry by the Government of the United States. If U.S. Customs determines that the certification is invalid because of an error, and the remaining documentation fulfills requirements for entry under the Andean Special Access Textile Program then a new certification from the Government of the Republic of Colombia must be obtained or a visa waiver issued by the U.S. Department of Commerce at the request of the Government of the Republic of Colombia must be obtained and presented to the U.S. Customs Service before any portion of the shipment will be released.

Any shipment found not to be in compliance with the provisions of the Andean Special Access Textiles Program relating to trade in textile products wholly assembled of U.S. components cut from U.S. formed fabrics, may be permanently denied entry under this program.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked or mutilated commercial sample shipments valued at U.S.$250 or less, do not require a visa or certification for entry and shall not be charged to existing quota levels.

Visaed merchandise and products eligible for the Andean Special Access Textiles Program may not appear on the same invoice.

The visa and certification stamps are enclosed. The certification stamp for exempt items remains unchanged.

The actions taken concerning the Government of the Republic of Colombia with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the Federal Register.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Annex A—Colombian Traditional Folklore Handicraft Textile Products

''Colombian Items'' are traditional Colombian products, cut, sewn or otherwise fabricated by hand in cottage units of the cottage industry. The following is the agreed upon list of such items:

1. *Bedspread:* Bedspread made on manual loom.
2. *Blouse with crochet knitted neck:* A blouse made of greige cloth heavily decorated around the neck, extending down the front and around the sleeves with hand crochet work. This blouse also has embroidered panels extending down the front on either side of the crochet work.

Annex A—Colombian Traditional Folklore Handicraft Textile Products—Continued

3. *Embroidered Blouse:* Hand cut and hand sewn blouse with extensive hand embroidery on the upper front and lower portions.
4. *Embroidered Skirt:* Hand cut and hand sewn skirt with extensive hand embroidery.
5. *Blankets, Hand Woven:* These colorful blankets are hand woven from wool, cotton or wool and cotton, heavy yarns to form striped or block patterns. The ends may be finished with spangles formed by the ends of the yarn and knotted, or may be hemmed.
6. *Indian Embroidered Cloth:* Cloth panels hand embroidered with various crude and colorful Indian scenes. Generally these cloths are used as wall hangings.
7. *Typical Colombia Dress:* An ankle length dress with a very wide skirt trimmed with wide handmade lace. The entire dress is hand cut and hand sewn and is a typical dress for gaiety affairs.
8. *Typical Guajira Dress:* A traditional loose fitting women's garment formed by a folded rectangular piece of fabric with a hole or slot in the center for the head, with intricate embroidery around the neck. This dress is made similar to a ruana, but has the outer edges sewn together except for slots for the hands and arms, and has closures on the front.
9. *Typical Mapale Dress:* A knee length dress consisting of very wide skirt having a row of heavy ruffles around the blouse portion and two bands of wide ruffles forming the skirt. A very gay colored festival dress.
10. *Typical Mestiza Dress:* A native handmade dress with wide neckline, ruffled collar and wide skirt and with ruffles on the lower part of the skirt.
11. *Hammock:* Multicolored stripped hammocks made by hand from coarse fabrics. Ends are formed and reinfored with strong rope.
12. *Jacket, hand knitted:* Wholly hand knitted jacket. These jackets are usually knitted from wool yarns. Patched pockets, also hand knitted, are hand sewn to the garment.
13. *Jacket of hand loomed fabric:* These jackets are wholly hand made from hand loomed fabrics. Patched pockets, also of hand loomed fabric, are hand sewn to the garment.

Annex A—Colombian Traditional Folklore Handicraft Textile Products—Continued

14. *Ruana:* A cloak made from a heavy rectangular piece of fabric or a blanket with hole in the center for the head to pass through. This is a typical garment worn by men, women and children throughout the higher and cooler altitudes of Colombia. The men's ruana will generally have no fringes. Women's ruanas may have fringes and are sometimes slit from the neck opening to the edge to permit the wearer to put it on as a cape. Children's ruanas sometimes have a color around the opening with draw strings for a close fit. These garments are sometimes known as ponchos.
15. *Rugs, hand woven or hand knotted:* These rugs are usually made from wool yarns and are either wholly hand woven or hand knotted. They are generally square or rectangular in shape and are in colorful designs.
16. *Macrame Shawl:* Hand made shawls wholly of macrame lace or with macrame lace edge. The shawls are in various colors with the typical long fringe around the lower edges.
17. *Sweaters and Cardigans, hand knitted:* Wholly hand knitted sweaters and cardigans, generally a bulky knit with decorative vertical patterns.
18. *Table Cloths and Napkins, embroidered:* Table cloths and napkins cut and hemmed by hand and extensively embroidered by hand.
19. *Colorful waist band:* Hand plaited waist bands in multicolors. These are sometimes sewn together to form wide bands.
20. *Wall hangings, rectangular:* A colorful wall hanging made from coarse yarns connected to decorative crudely woven bands. These are hand made and come in various sizes.
21. *Wall hanging, tree:* Tree shaped wall hangings formed by connecting together crudely woven bands in graduated sizes with coarse yarns to form the outline of a tree. The wall hanging is decorated with small balls of cotton fiber.
22. *Indian Color Knapsack:* Knapsack made with belt like woven or plaited strap and multicolored bag, to be worn on the shoulder.
23. *Pillow Covers, Embroidered by hand:* Covers for throw pillow containing extensive hand embroidery covering 50 percent or more of the outer surface of the cover.
24. *Hand made macrame handbags*

Annex A—Colombian Traditional Folklore Handicraft Textile Products—Continued

25. *Molas:* Hand appliqued layers of different colors, forming geometric and abstract designs, made of cotton material.
26. *Santa Rosa Tapestries, Bedspreads and Pillowcases:* Tapestries, bedspreads and pillowcases, of vivid colors, with hand appliqued figures forming landscapes and folk scenes, made of cotton material.

[FR Doc. 95–30097 Filed 12–8–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

DOE Request for an Additional 45 Days to Respond to Defense Nuclear Facilities Safety Board Recommendation 95–2, Safety Management

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) requires the Department of Energy to publish its response to Defense Nuclear Facilities Safety Board recommendations for notice and public comment. The Defense Nuclear Facilities Safety Board published Recommendation 95–2 concerning Safety Management in the Federal Register on October 19, 1995 (60 FR 54065). The Department of Energy (DOE) hereby publishes notice of a request for 45-days additional time to respond to Recommendation 95–2 as allowed by the statute cited above.

DATES: Comments, data, views, or arguments concerning the Secretary's request are due on or before January 10, 1996.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Peter N. Brush, Principal Deputy, Assistant Secretary for Environmental, Safety and Health, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued in Washington, D.C., on December 1, 1995.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy

December 1, 1995.

The Honorable John T. Conway, Chairman,
Defense Nuclear Facilities Safety Board,
Suite 700, 625 Indiana Avenue, N.W.,
Washington, DC 20004.

Dear Chairman Conway: This letter acknowledges receipt of your Recommendation 95–2 regarding Safety Management. The issues identified in the Recommendation are extensive and may have significant impact on many of our existing and developing programs and initiatives. Accordingly, the Department will require additional time to evaluate fully these cross-cutting issues and their impact from both a headquarters and field perspective.

In accordance with 42 U.S.C. 2286d, the Department requests an additional 45 days to respond to Recommendation 95–2. If a 45 day extension is granted, the Department will respond to the Board by January 17, 1996.

Sincerely,

Hazel R. O'Leary

[FR Doc. 95–30084 Filed 12–8–95; 8:45 am]

BILLING CODE 6450–01–P

Privatization of Isotope Activities; Comment Request

AGENCY: Department of Energy (DOE).

ACTION: Notice for Expressions of Interest.

SUMMARY: Expressions of Interest are sought concerning the possible privatization of DOE isotope activities such as selling or leasing existing DOE facilities for commercial use; sale of existing isotope inventory; isotope marketing, distribution, or technical services; and other innovative arrangements for enhanced private sector involvement in isotope operations.

DATES: This notice is effective on the date of publication and will remain effective until February 23, 1996. Responses may be submitted at any time prior to February 23, 1996. An information meeting addressing this notice will be held at the DOE facility in Germantown, Maryland, from 9:00 a.m. until noon on January 10, 1996. Information packages distributed during the January 10, 1996, meeting will be made available to interested parties after January 11, 1996. Submit requests to the programmatic information contact listed below.

FOR FURTHER INFORMATION CONTACT: Requests for programmatic information should be directed to: Mr. Owen W. Lowe, U.S. Department of Energy, Isotope Production and Distribution, NE–70 (GTN), 19901 Germantown Road, Germantown, MD 20874, (301) 903–5161.

Expressions of Interest (original plus five copies), citing this notice, should be postmarked by February 23, 1996, and mailed to: U.S. Department of Energy, Document Control Specialist, HR–562, Headquarters Procurement Operations, 1615 M Street, N.W., Washington, D.C. 20036.

SUPPLEMENTARY INFORMATION:

I. Purpose
II. Areas of DOE Interest
III. Expressions of Interest Format

I. Purpose

The DOE Isotope Program has a twofold mission. First, the Isotope Program produces and distributes certain radioisotopes and enriched stable isotopes for research or development purposes. Prices for these isotopes are set at a level designed to balance cost recovery with the national priority of meeting U.S. research needs and supporting our health care system. Second, other radioisotopes and enriched stable isotopes are produced and distributed for medical diagnostics and therapeutics, industrial, agricultural, and other useful applications on a cost-recovery basis.

The DOE Isotope Program currently produces isotopes at six locations in the United States. The isotope products and related services from these sites are provided only where: a) there is no existing domestic, private sector capability; b) unique Government facilities are needed to provide such a capacity; or c) other productive capacity is insufficient to meet pressing national needs. While continuing to assure that a reliable supply exists, DOE is encouraging privatization of DOE Isotope Program activities in order to fulfill the DOE Isotope Program's missions at a reduced cost to isotope customers and the Nation's taxpayers by greater involvement of the private sector. This notice is not intended to be a solicitation for proposals. Instead, it is an attempt to obtain information and to identify interested private sector participants in the possible privatization of some or all DOE isotope activities. Activities that fall under the scope of this notice include, but are not limited to, selling or leasing existing DOE facilities for commercial use; sale of existing isotope inventory; isotope marketing, distribution, or technical services; and other innovative arrangements for private sector isotope operations. Depending on the nature of the responses and subsequent determinations by DOE, a formal solicitation for competitive proposals may be published in the future, and awards may be made based upon an evaluation of proposals received pursuant to the evaluation criteria as stated in the solicitation.

II. Areas of DOE Interest

DOE is seeking to encourage innovative Expressions of Interest for privatization. Expressions of Interest should be structured to address:

1. The development or deployment of isotope production, distribution, and services in terms of:

a. A significant decrease over the cost of current methods through a substantial reduction in the cost of manufacturing by use of more efficient methods or technology.

b. Feasibility of approach consistent with proposed cost. The Expression of Interest must demonstrate a knowledgeable approach and an appreciation of risks.

2. Probability of success: Clarity of objectives and quality of approach. The approach should be based on well-defined objectives, milestones, and deliverables. The approach should contain a reasonable and practical plan for providing the maximum private sector participation on a financial and managerial basis and at the least cost to the Government.

3. The appropriateness of the facilities and techniques. The need for (and availability of) facilities, equipment, design and manufacturing tools; technical, financial, and administrative resources; and the protection of intellectual property.

III. Expression of Interest Format

The length of the Expression of Interest should not be more than 15 pages (double spaced) using a 12-point type font. It is left to the responder to determine how best to use the 15 pages, however, it would facilitate review if the Expression of Interest was divided into the following sections:

Section 1—Summary
Section 2—Comments on privatization of some or all DOE isotope activities
Section 3—Additional comments and recommendations

Proprietary Information

If the Expression of Interest contains information that is privileged or confidential and that the respondent does not want disclosed to the public or used by the Government for any purpose other than this notice, the respondent should place the following notice on the Expression of Interest.

Notice: The data contained in pages _____ of this Expression of Interest has been submitted in confidence and contains trade secrets or commercial or financial information that is confidential or privileged, and such data should be used or disclosed only for purposes of consideration of this

response. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source including the respondent.

Submission

Each submittal should consist of six copies, one original and five photocopies. The original copy of the Expression of Interest shall contain all documents that bear original signatures. DOE is under no obligation to pay for any costs associated with the preparation or submission of Expressions of Interest in response to this notice. DOE reserves the right to respond or not respond to any portion, all, or none of the Expressions of Interest submitted in response to this notice.

Issued in Washington, D.C., on November 21, 1995.

Terry R. Lash,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 95–30086 Filed 12–8–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–32–000]

Viking Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed VGT Expansion Project and Request for Comments on Environmental Issues

December 5, 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 VGT Expansion 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

Viking Gas Transmission Company (VGT) wants to expand the capacity of its facilities in Kittson and Norman Counties, Minnesota, to transport an additional 19,420 decatherms per day of natural gas. VGT requests authorization to construct and operate two 24-inch-diameter pipeline loops, totalling 13.51 miles in length, and appurtenant facilities.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 179.3 acres of land, including 81.9 acres of temporary right-of-way. Following construction, all of the land would be restored and allowed to revert to its former use. No new permanent right-of-way is required for the project.

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 alternatives 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 issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by VGT.

- A total of 155 acres of agricultural land, virtually all of it is prime farmland soils, would be affected.
- One perennial stream (the North Branch, Two Rivers) would be crossed.

Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

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, and measures to avoid or lessen environmental impact. The more specific your comments, the 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, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–32–000;
- Send a *copy* of your letter to: Mr. Jeff Shenot, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., Room 7L–05, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before January 10, 1996.

If you wish to receive a copy of the EA, you should request one from Mr. Shenot 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''.

[1] Viking Gas Transmission Company'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, 888 First 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.

Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intevenor must provide copies of its filings 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 of timely motions to intervene in this proceeding has passed. Therefore, parties now 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 Mr. Jeff Shenot, EA Project Manager, at (202) 219–0295.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30061 Filed 12–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–91–000]

Stingray Pipeline Company; Notice of Request Under Blanket Authorization

December 5, 1995.

Take notice that on December 1, 1995, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP96–91–000 a request pursuant to Sections 157.205 and 157.208(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208) for authorization to own and operate, by means of construction and acquisition, various facilities located offshore Louisiana, in order to give Stingray access to additional gas supplies and to expand operational flexibility, under Stingray's blanket certificate issued in Docket No. CP91–1505–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray proposes to: (1) Acquire, own and operate dual 8-inch meter facilities and approximately 0.13 mile of 20-inch lateral that will be constructed by Midcon Exploration Company and Flex Trend Development Company (the Producers) on the construction platform being constructed by the Producers in Garden Banks Block 72, offshore Louisiana; (2) construct, own and operate 15.49 miles of 20-inch lateral from the Garden Banks 72 production platform to Stingray's existing facilities in Vermilion Block 362, offshore Louisiana; (3) construct, own and operate a 20-inch subsea tap valve on the proposed 20-inch lateral in Vermilion Block 408 for future interconnects; and (4) construct, own and operate a 12-inch subsea tap valve on the proposed 20-inch lateral in Vermilion Block 385 for a future interconnect.

It is stated that construction of the 20-inch lateral and related facilities will allow Stingray to receive and transport up to 75 Mmcf of natural gas per day produced by the Producers at Garden Banks 72. It is asserted that the taps proposed in (3) and (4) above would allow Stingray additional opportunities for operational flexibility in acquiring volumes of gas that may become available in the future from other production sources in the Vermilion and Garden Banks areas. It is estimated that the cost of acquisition and construction would be approximately $8.927 million.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30013 Filed 12–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–10–001]

UtiliCorp United Inc.; Notice of Amended Application

December 5, 1995.

Take notice that on December 1, 1995, UtiliCorp United Inc. (UtiliCorp) filed an amendment to its November 3, 1995, application in Docket No. ES96–10–000, under § 204 of the Federal Power Act. In the original filing, UtiliCorp seeks authorization to issue and sell up to and including $7.3 million of Pollution Control Bonds (PCBs) which would be secured by a letter of credit. In its amendment, UtiliCorp indicates that the original application inadvertently failed to specify a request for an authorization that would cover the full amount of the letter credit used to support the payment of principal and interest of the PCBs issuance, when due. In the amendment, UtiliCorp requests an authorization to enter into a letter of credit in the amount of $7,502,300 to be issued in support of the payment of the principal of and interest on the PCBs.

Any person desiring to be heard of to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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 385.214). All such motions or protests should be filed on or before December 13, 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. 95–30012 Filed 12–8–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5341–3]

CERCLA Enforcement Against Lenders and Government Entities That Acquire Property Involuntarily

AGENCY: Environmental Protection Agency.

ACTION: Announcement and publication of policy.

SUMMARY: This policy memorandum sets forth the Environmental Protection Agency (''EPA'') and the Department of Justice's (''DOJ'') policy regarding the government's enforcement of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') against lenders and against government entities that acquire property involuntarily. As an enforcement policy, EPA and DOJ intend to apply as guidance the provisions of the ''Lender Liability Rule'' promulgated in 1992, thereby endorsing the interpretations and rationales announced in the Rule. See

''Final Rule on Lender Liability Under CERCLA,'' 57 Fed. Reg. 18344 (April 29, 1992). This rule was vacated by the Circuit Court of Appeals for the District of Columbia in 1994.

The purpose of the memorandum is to provide guidance within EPA and DOJ on the exercise of enforcement discretion in determining whether particular lenders and government entities that acquire property involuntarily may be subject to CERCLA enforcement actions. The memorandum advises EPA and DOJ personnel to consult both the regulatory text of the Rule and the accompanying preamble language in exercising their enforcement discretion under CERCLA as to lenders and government entities that acquire property involuntarily.

FOR FURTHER INFORMATION CONTACT: Laura Bulatao, Office of Site Remediation Enforcement, 401 M St. SW. (Mail Code 2273A), Washington, DC 20460 (202–564–6028), or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC area at 703–412–9810).

Note: The memorandum below has been altered from the original memorandum issued on September 22, 1995 to reflect updated information about obtaining additional copies and whom to contact for further information. No other changes were made to the text of the policy. The original memorandum issued on September 22, 1995 was not published in the Federal Register.

Dated: November 30, 1995.

Jerry Clifford,

Director, Office of Site Remediation Enforcement, U.S. Environmental Protection Agency.

Memorandum

Subject: Policy on CERCLA Enforcement Against Lenders and Government Entities That Acquire Property Involuntarily

From: Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency

Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice

To: Regional Administrators, Regions I–X, EPA, Regional Counsel, Regions I–X, EPA, Waste Management Division Directors, Region I–X, EPA, Chief, Environmental Enforcement Section, DOJ, Assistant Section Chiefs, Environmental Enforcement Section, DOJ

This memorandum sets forth the Environmental Protection Agency's (''EPA'') and the Department of Justice's (''DOJ'') policy regarding the government's enforcement of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') against lenders and against government entities that acquire property involuntarily. As an enforcement policy, EPA and DOJ intend to apply as guidance the provisions of the ''Lender Liability Rule'' promulgated in 1992, thereby endorsing the interpretations and rationales announced in the Rule. See ''Final Rule on Lender Liability Under CERCLA,'' 57 Fed. Reg. 18,344 (April 29, 1992).[1] (This rule has been vacated by a court, as described below in the ''Background'' section).

ADDRESSES: Additional copies of this policy statement can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS accession number PB95–234498. For telephone orders or further information on placing an order, call NTIS at 703–487–4650 for regular service or 800–553–NTIS for rush service. For orders via email/Internet send to the following address: orders@ntis.fedworld.gov.

FOR FURTHER INFORMATION CONTACT: Laura Bulatao, Office of Site Remediation Enforcement (Mail Code 2273A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202–564–6028), or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC area at 703–412–9810).

I. Background

This policy guidance establishes EPA's and DOJ's position regarding possible enforcement actions against lenders and government entities who are associated with property that may be subject to a CERCLA response action. EPA and DOJ recognize CERCLA's unintended effects on lenders and government entities and the relative concern from these parties regarding the consequences of potential enforcement. In light of these concerns, lenders may refuse to lend money to an owner or developer of a contaminated or potentially contaminated property or they may hesitate in exercising their rights as secured parties if such loans are made. Additionally, government entities that involuntarily acquire property may be reluctant to perform certain actions related to contaminated or potentially contaminated property.

The language of Section 101(20)(A) leaves lenders and other interested parties uncertain as to which types of actions—such as monitoring vessel or facility operations, requiring compliance with applicable laws, and refinancing or undertaking loan workouts—they may take to protect their security interests without risking EPA enforcement under CERCLA. Courts have not always agreed on when a lender's actions are ''primarily to protect a security interest,'' and what degree of ''participation in the management'' of the property will forfeit the lender's eligibility for the exemption. This uncertainty was heightened by dicta in the *Fleet Factors*[2] opinion, where the circuit court suggested that a lender participating in the management of a vessel or facility ''to a degree indicating a capacity to influence the corporation's treatment of hazardous waste'' could be considered liable under CERCLA.[3]

The lack of legislative history on and consistent court treatment of the CERCLA Section 101(20)(A) security interest exemption prompted EPA to address potential lender liability for cleanup costs at CERCLA sites in the Lender Liability Rule, which was promulgated in April 1992.

Regarding the exemption for government entities, neither the legislative history of CERCLA Sections 101(20)(D) and 101(35)(A) nor the case law provide sufficient explanation of when a property acquisition or transfer is considered involuntary. Thus, in the Rule, EPA also clarified the language of these sections, describing when a government entity was exempted from CERCLA enforcement as an owner or operator or was protected from third party actions.

However, in *Kelley* v. *EPA*,[4] the Circuit Court of Appeals for the District of Columbia vacated the Rule on the ground that EPA lacked authority to issue the Rule as a binding regulation. Nevertheless, the *Kelley* decision did not preclude EPA and DOJ from following the provisions of the Rule as enforcement policy, and the agencies have generally done so.

II. Policy Statement

This memorandum reaffirms EPA's and DOJ's intentions to follow the

[1] This guidance does not address lender liability under any statutory or regulatory authority, rule, regulation, policy, or guidance, other than CERCLA. Specifically, this guidance does not cover lender liability determinations as they relate to the Resource Conservation and Recovery Act (''RCRA'') and RCRA's Underground Storage Tank program.

[2] *United States* v. *Fleet Factors Corp.*, 901 F.2d 1550, 1557 (11th Cir. 1990), cert. denied, 111 S. Ct. 752 (1991).

[3] *Fleet*, 901 F.2d at 1557.

[4] 15 F.3d 1100 (D.C . Cir. 1994), reh. denied, 25 F.3d 1088 (D.C. Cir. 1994), cert. denied, *American Bankers Ass'n* v. *Kelly*, 115 S.Ct. 900 (1995).

provisions of the Lender Liability Rule as enforcement policy. EPA and DOJ endorse the interpretations and rationales announced in the Rule and its preamble. The purpose of this memorandum is to provide guidance within EPA and DOJ on the exercise of enforcement discretion in determining whether particular lenders and government entities that acquire property involuntarily may be subject to CERCLA enforcement actions. In making such determinations, EPA and DOJ personnel should consult both the regulatory text of the Rule and the accompanying preamble language in exercising their enforcement discretion under CERCLA as to lenders and government entities that acquire property involuntarily.[5]

After the promulgation of the Lender Liability Rule, but prior to its invalidation, several district and circuit courts adhered to the terms of the Rule or interpreted the statute in a manner consistent with the Rule.[6] Moreover, notwithstanding the Rule's invalidation in *Kelley*, since that decision several courts have also interpreted the statute in a way that is consistent with the Rule.[7] EPA and DOJ believe that this case law is further evidence of the reasonableness of the agencies' interpretation of the statute, as embodied formerly in the Rule and now in this policy statement.

III. Use of This Policy

The policies and procedures established in this document and any internal procedures adopted for its implementation are intended solely as guidance for employees of EPA and DOJ. They do not constitute rulemaking and may not be relied on to create a right or benefit, substantive or procedural, enforceable at law, or in equity, by any person. EPA and DOJ reserve the right to act at variance with this guidance or its internal implementing procedures.

[FR Doc. 95–29842 Filed 12–8–95; 8:45 am]
BILLING CODE 6560–50–P

[5] See 57 Fed. Reg. 18,344 (April 29, 1992) (text and preamble).

[6] See *Northeast Doran, Inc.* v. *Key Bank of Maine,* 15 F.3rd 1 (1st Cir. 1994); *United States* v. *McLamb,* 5 F.3d 69 (4th Cir. 1993); *Waterville Indus., Inc.* v. *Finance Authority of Maine,* 984 F. 2d 549 (1st Cir. 1993); *United States* v. *Fleet Factors,* 901 F.2d 1150 (11th Cir. 1990), *on remand,* 821 F. Supp. 07 (S.D. Ga. 1993); *Kelley* v. *Tiscornia,* 810 F. Supp. 901 (W.D. Mich. 1993); *Grantors to the Silresim Site Trust* v. *State Street Bank & Trust Co.,* 23 ELR 20428 (D. Mass. Nov. 24, 1992).

[7] *See Z & Z Leasing, Inc.* v. *Graying Reel, Inc.,* 873 F.Supp. 51 (E.D. Mich. 1995); *Kemp Industries, Inc.* v. *Safety Light Corp.,* 857 F.Supp. 373 (D.N.J. 1994).

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 95–118, FCC 95–286]

Notice of Public Information Collections for Streamlining the International Section 214 Authorization Process and Tariff Requirements submitted to OMB for Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On July 17, 1995, the Federal Communications Commission released a Notice of Proposed Rulemaking (NPRM) to streamline the international Section 214 authorization process and tariff requirements. This NPRM, published in the Federal Register on July 25, 1995, Volume 60, page 37989, contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Written comments by the public on the proposed and/or modified information collections are due January 10, 1996. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before February 9, 1996.

ADDRESSES: Submit all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, NW., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: New Collection.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 431 per year.

Estimated Time Per Response: 8 hours.

Total Annual Burden: 3448 hours.

Needs and Uses: The NPRM proposes to streamline the international Section 214 authorization process and tariff requirements. The proposed rules would greatly reduce the regulatory burdens on applicants, authorized carriers, and the Commission. The NPRM proposes to reduce the need for carriers to file multiple applications by enabling a non-dominant carrier to obtain a global Section 214 authorization, which is not limited to specific carrier facilities, and by eliminating several regulatory requirements that require carriers to file multiple Section 214 applications. The global Section 214 authorization would allow carriers to provide international services on a facilities-basis to virtually all points in the world, using any licensed facility. This authorization would be subject to an exclusion list that the Commission would publish identifying countries or facilities for which there are restrictions. In regard to the regulatory requirements being removed, Section 63.01 is proposed to be amended to make it applicable only to applications for domestic Section 214 authority. A new rule is proposed that will detail the application requirements for international Section 214 authority, and include the provisions for filing a global Section 214 application. In addition, the proposed rule will enable resellers to provide international resale services via any authorized common carrier, except those affiliated with the reseller, without obtaining additional authority. Also, private line resale carriers would be able to resell interconnected private lines for switched services to all designated ''equivalent'' countries, without obtaining additional authority to serve each equivalent country. And, Section

63.15 is proposed to be amended to enable carriers to add circuits on private satellite or cable systems, without obtaining prior authority. The NPRM also proposes to simplify the Section 214 and cable landing license application process by reducing the detailed information now required in Sections 63.01 and 1.767. The NPRM also proposes to encourage filing of international Section 214 applications electronically and on computer disk, and to require that any information contained in an application in a foreign language be accompanied with a certified translation in English.

The NPRM further reduces filing requirements by allowing dominant carriers to automatically convey transmission capacity in submarine cables to other carriers without obtaining prior Section 214 authority. Also, the NPRM proposes to further streamline the tariff requirements for non-dominant international resale and facilities-based carriers by permitting them to file their international tariffed rates on one day's notice instead of the current 14 days' notice, and seeks comment, in general, on whether to streamline the international tariff process. However, these tariff related proposals are not subject to the PRA.

Finally, the Commission seeks comments on what, if any, Section 214 authorization requirements it should forbear from applying if given forbearance authority by Congress.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30118 Filed 12–8–95; 8:45 am]

BILLING CODE 6712–01–F

Schedule for En Banc Hearing, Advanced Television Proceeding

December 6, 1995.

The schedule for the Federal Communications Commission's December 12, 1995 *en banc* hearing on Advanced Television, MM Docket No. 87–268, is as follows:

8:30–8:45 a.m.—Opening remarks from the Commission

8:45–10:15 a.m.—Commercial Opportunities of Digital Broadcast

The transition to digital broadcast is fraught with risk and uncertainty yet promises rich rewards if successful. Panelists discuss the opportunities and challenges created by the transition to digital television. Issues to be explored include whether digital technology will allow broadcasters to compete in an increasingly challenging video marketplace, how will they finance the transition, what is the impact on their competitors?

Richard E. Wiley, Chairman, Advisory Committee on Advanced Television Services
Steven Rattner, Managing Director, Lazard Freres & Co
Ed Grebow, President, TELETV Systems, TELETV
Neil Braun, President, NBC Television Network, NBC, Inc.
John Hendricks, Chairman and CEO, Discovery Communications, Inc./NCTA
Stanley Hubbard, Chairman and CEO of Hubbard Broadcasting, Inc.
Lawrence Grossman, President, Brookside Productions & Horizons Cable

10:30 a.m.–noon—The Public Interest, Convenience and Necessity

The Commission's current public interest rules, including those mandating specific statutory requirements, were developed for broadcasters essentially limited by technology to a single, analog video programming service. Panelists discuss the potential for more flexible and dynamic use of the spectrum through digital broadcast and its impact on broadcasters' obligation to serve the public interest.

Gigi Sohn, Deputy Director, Media Access Project
Alan Braverman, Vice President and General Counsel, Cap Cities/ABC
Barry Diller, Chairman, Silver King Communications
Faye Anderson, President, Douglass Policy Institute
David Honig, Executive Director, Minority Media and Telecommunications Council
John Siegel, Sr. Vice President, Chris Craft Industries/INTV

1:30–3:00 p.m.—Digital Applications

The digital transmission system designed by the Grand Alliance would provide broadcasters with new flexibility as they embark on serving the American public with the next generation of television. Allowing some flexibility would increase the ability of broadcasters to compete in an increasingly competitive marketplace. Panelists discuss potential for new applications to complement broadcast video as well as look to the future for services made possible on recovered channels.

Ed Horowitz, Senior Vice President of Technology, Viacom
George Keyworth, Chairman, Progress and Freedom Foundation
James C. McKinney, Chairman, Advanced Television Systems Committee
Edward Reilly, President, McGraw-Hill Broadcasting/MSTV
John Major, Senior Vice President and Assistant Chief Corporate Staff Officer, Motorola
James Carnes, President and CEO, Sarnoff/Grand Alliance
Joseph A. Flaherty, Senior Vice President, Technology, CBS Inc./ATSC Broadcast Caucus

3:15–4:30 p.m.—Impact on Consumers

While a transition to digital broadcast promises many benefits, the public interest would be served by avoiding any substantial dislocation of service to existing viewers. With many competing services coming on line, greater incentives exist for broadcasters to convert rapidly to digital broadcast. Panelists discuss the expected impact on consumers as it relates to deployment of new equipment and services, the ability of broadcasters to continue to serve their audience during the transition, the opportunities for improved service and technology and the extent to which consumers' value is enhanced such that analog transmission may be terminated.

Bruce Allan, Vice President, Technology & Business Development, Thompson Consumer Electronics
Sherwin Grossman, President, Community Broadcasters Association (CBA)
John Abel, President and CEO, Datacast Partners
Ralph Gabbard, President/COO of Gray Communications/NAB
David Liroff, Vice-President and Chief Technology Officer, WGBH Educational Foundation

The hearing will take place Tuesday, December 12, 1995, from 8:30 a.m. to 4:30 p.m. in the Commission Meeting Room, Room 856, 1919 M St., NW., Washington, DC, and is open to the public. Concurrently, digital television technology demonstrations, also open to the public, will be presented. These demonstrations will be available for viewing Tuesday, December 12 from 8:30 a.m. to 5:30 p.m. in the Commission's Training Center located on the first floor of 2000 M St., NW., Washington, DC. The Commission may alter the schedule of demonstrations and panelists if necessary.

Scheduled demonstrations will be presented by:

The Digital HDTV Grand Alliance
CBS, Inc.
Hitachi America, Ltd.
Hubbard Broadcasting, Inc.
Microsoft Corporation
Sony Corporation of America
Texas Instruments

For the hearing impaired, an ASL interpreter will translate the hearing. Video tapes, which will be closed captioned, and written transcripts of the hearing will be available for a fee.

For further information about the hearing, please contact Saul Shapiro at (202) 418–2600. The contacts for media coverage are Karen Watson, David Fiske,

Maureen Peratino and Audrey Spivack at (202) 418–0500.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30230 Filed 12–8–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended:

Star Clippers Ltd., Luxembourg Shipping Services S.A., Star Flyer N.V. and Star Clipper N.V., 4101 Salzedo Street, Coral Gables, Florida 33146

Vessel: STAR FLYER

Dated: December 5, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–30021 Filed 12–8–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. part 540, as amended:

Star Clippers Ltd. and Luxembourg Shipping Services S.A., 4101 Salzedo Street, Coral Gables, Florida 33146

Vessel: STAR FLYER

Dated: December 5, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–30021 Filed 12–8–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revisions, of the following reports:

1. Report title: Annual Report of Foreign Banking Organizations; Foreign Banking Organization Structure Report on U.S. Banking and Nonbanking Activities; and Foreign Banking Organization Confidential Report of Operations

Agency form number: FR Y-7, FR Y-7A, and FR 2068

OMB Docket number: 7100-0125

Frequency: Annual

Reporters: Foreign banking organizations

Annual reporting hours: 13,243

Estimated average hours per response: 41

Number of respondents: 323

Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. §§1844(c), 3106, and 3108(a)]. Upon request from a respondent, certain information in the FR Y-7 and FR Y-7A may be deemed confidential pursuant to sections b(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §552]. All information provided in the FR 2068 is confidential [5 U.S.C. §552(b)(8)] and is subject to special handling procedures [12 CFR §261.11(h)].

These reports are required from all foreign banking organizations (FBOs) engaged in the business of banking in the United States. Respondents must report, on the FR Y-7, information on the structure of their activities in the United States as well as financial statements prepared in accordance with home country accounting practices, separate financial statements for U.S. nonbanking subsidiaries, an organization chart reflecting investments in U.S. companies and foreign companies that do business in the United States, disclosure of large shareholders, and a list of officers and directors.

The FR 2068 requires FBOs to report revenues and expenses, loan losses, asset quality, hidden reserves not disclosed on the FR Y-7, an organization chart, and financial data on non-U.S. subsidiaries that the FBO controls. Respondents will continue to submit the FR 2068 directly with the Federal Reserve Board.

Abstract: On December 16, 1994, the Federal Reserve Board approved earlier versions of these proposals for public comment and published notice in the FR [Vol. 60, FR 1779, January 6, 1995]. The initial comment period (30 days) expired on February 5, 1995. In light of the extensive changes proposed, commenters requested three successive 30-day extensions of the comment period in order to fully assess the effects of the changes. As a result of those extensions, the final comment period expired on May 31, 1995.

There were six commenters, four trade groups and two FBOs. The nature of the comments varied. Some addressed burden, some concerned confidentiality, and some suggested improvements to the reporting forms and instructions. Comments regarding burden focused on the accuracy of the overall burden estimate and on specific proposed revisions that commenters believed would increase burden significantly.

After considering the comments, the Federal Reserve Board has approved several modifications to the initial proposal.

Reporting Structure

FR Y-7

All FBOs engaged in the business of banking in the United States file the FR Y-7 annually, as of the end of the reporter's fiscal year. 323 FBOs file the FR Y-7: 55 foreign bank holding companies; 218 foreign banks with commercial lending companies, Edge corporations, or U.S. branches and agencies; and 50 foreign parent companies. Respondents report information on the structure of their activities in the United States, as well as the following financial and managerial information:

(1) Financial statements prepared in accordance with home country accounting practices.

(2) Separate financial statements for U.S. nonbanking subsidiaries.

(3) An organization chart reflecting investments in U.S. companies and foreign companies that do business in the United States.

(4) Disclosure of large shareholders of registered shares and disclosure of known large shareholders of bearer shares.

(5) A list of officers and directors.

(6) Information to determine continuing eligibility as a qualified foreign banking organization under sections 2(h) and 4(c)(9) of the Bank Holding Company Act.

FR 2068

FBOs that have a significant presence in the United States also file the FR 2068 annually. Prior to the latest revisions, FBOs with small U.S. banking operations were eligible for a filing exemption. While those exemptions were in effect there were 292 respondents. Elimination of the exemption adds 31 respondents. The FR 2068 collects information that enables the Federal Reserve to carry out its responsibilities by assessing the impact of an FBO's worldwide operations on its U.S. banking business. Prior to the latest revisions, this report required disclosure of revenues and expenses as calculated in accordance with local accounting practices and an explanation or general description of those accounting practices. The report still requires disclosure of loan losses, asset quality, gains and losses on securities, and hidden reserves not disclosed in the FR Y-7. The format calls for beginning balances, additions, deductions, and ending balances. The report provides flexibility that enables an FBO to submit the information in a manner that will minimize burden. Respondents may request permission to report substitute information when the specific reporting requirements would result in undue burden or expense or when the information is unavailable in the requested format.

The FR 2068 also collects financial data on non-U.S. subsidiaries. Financial statements are required on all majority-owned (more than 50 percent), unconsolidated, material foreign subsidiaries. FBOs also must report financial data detailing the total assets, total stockholders' equity, and net income of all material foreign companies in which it owns between 25 percent and 50 percent of the shares or which it otherwise controls.

The FR 2068 requires that reporters provide an organization chart that details all foreign companies that the FBO directly or indirectly owns, controls, or holds with power to vote 25 percent or more of any class of voting stock. This requirement is broader than the organization chart required by the FR Y-7 in that the latter is limited to all related U.S. companies and foreign companies that engage in business in the United States.

Changes Proposed Initially

FR Y-7

Several revisions were initially proposed for the FR Y-7: adding the Nonbank Financial Information Summary (NFIS), financial statements for each of the FBO's U.S. nonbanking subsidiaries, replacing the free-form financial statements currently submitted; adding a new schedule to collect information on risk-based capital; requiring submission of documentation explaining differences in accounting standards in the FBO's home country from U.S. accounting standards; requiring submission of a copy of Securities and Exchange Commission (SEC) Form 20-F for those respondents that report to the SEC; and replacing part of the FR Y-7 with a new report, the FR Y-7A, to collect information on the structure and activities of FBOs.

FR 2068

Initial proposed revisions to the FR 2068 included eliminating the filing exemption for those FBOs with small U.S. operations; eliminating earnings information; filing with the appropriate Federal Reserve Bank rather than directly with the Board; and adding several items to collect information on past due loans to replace similar information previously submitted in a free format. For both the FR Y-7 and FR 2068 it was proposed that the organization chart be expanded to include U.S. and non-U.S. companies owned by individuals who own 25 percent or more of the FBO.

Public Comments and Federal Reserve Board Recommendations.

After considering the comments, the Federal Reserve Board made several modifications to the initial proposed changes. Changes and comments are discussed below in detail.

FR Y-7

Commenters addressed several matters regarding the FR Y-7, including confidentiality, accounting standards, the organization chart, bearer shareholdings, and the Nonbank Financial Information Summary (NFIS.) There were no comments on the proposed new schedule for risk-based capital.

Confidentiality procedures. Several commenters asked for advance guarantee of confidentiality for the FR Y-7. If this request were to be granted, commenters stated that certain affiliates may be more willing to disclose information. Other commenters suggested that, although they had no expectation that a request for confidential treatment would be denied, the Board's existing procedure places them in an awkward position when seeking information from affiliates. They also asked that confidentiality be granted ''on request'' for NFIS information. However, it is not possible to guarantee the confidentiality of this information in light of the Freedom of Information Act, since ultimately a court may be called on to decide the matter. Under the applicable statutes and regulations, a foreign banking organization can make a case for confidentiality by showing that disclosure is likely to result in competitive harm or an invasion of personal privacy. The Board will agree to grant a request for confidential treatment that is properly supported with the understanding that if a Board decision to deny a formal request for access to such information is challenged in court, the court will decide the matter. In view of these considerations, the Board decided to retain the current procedures regarding confidentiality.

Explanation of national accounting standards. The Federal Reserve Board initially recommended that a respondent include a detailed explanation of national accounting standards and terminology with the FR Y-7 in the first year it files and thereafter in every year ending in ''5'' or ''0.'' This information would supplement the Board's understanding of the differences in accounting standards. Commenters requested that the Board clarify the scope of this proposed report item. Several commenters stated that they were not aware of any complete explanation of foreign accounting terminology and standards. Another commenter requested that the Federal Reserve accept explanations of the type filed with securities offerings statements with the Securities and Exchange Commission (SEC.) Another suggested that FBOs be permitted to submit a statement of material differences between Generally Accepted Accounting Principles (GAAP) and home country accounting requirements. After reviewing these comments, the Federal Reserve decided to drop the proposed report item, and will instead collect this information on an ad hoc

basis. Respondents that are SEC reporters must include a copy of SEC form 20-F (OMB No. 3235-0288) with the FR Y-7. The SEC form 20-F is similar to SEC form 10-K (Annual Report Pursuant to Sections 13 and 15(d) of the Securities and Exchange Act of 1934; OMB No. 3235-0063) and includes information on the differences between GAAP and the FBO's home country accounting standards.

Bearer shareholdings. Two commenters stated that they may be unable to identify bearer shareholders that have a greater than 5 percent interest in their organization. However, since Item 4 collects information on ''known shareholders'' there is no need to change this report item.

Risk-based capital schedule. No comments were received on this aspect of the proposal. This schedule breaks out details of an FBO's risk-based capital computations. If this information is confidential in the home country, the FBO would have the option of providing this information in the FR 2068. For banks from countries that do not follow a risk-based capital format, information on capital computations required by their home country banking supervisor(s) would be required.

Q and A checkboxes. No comments addressed the proposal to add several questions that require either a yes or no response, or a box to check, to assist the respondents in providing a complete report and to assist Federal Reserve Banks in their review and analysis. The checkboxes will reduce the need for follow-up correspondence with respondents.

Nonbank Financial Information Summary (NFIS). The Federal Reserve will collect summary financial information on U.S. nonbank subsidiaries of FBOs on the NFIS. The free-form financial statements for U.S. nonbank subsidiaries have been replaced by specific schedules of core financial information that will be processed electronically. The new reporting format includes a principal schedule of thirty-three balance sheet and income statement items (such as loans, securities, assets, capital, and income) and four supporting schedules with a total of forty-one items. Nonbanking subsidiaries with total assets of more than $1 billion must complete the principal and supporting schedules; nonbanking subsidiaries with total assets between $150 million and $1 billion must complete only the principal schedule; and nonbanking subsidiaries with total assets of less than $150 million must respond only to six core items on the principal schedule; these items are denoted by an asterisk on the reporting form. This information will enable the Federal Reserve to better assess the condition of the U.S. nonbank financial activities of foreign banking organizations. Commenters made several suggestions regarding the NFIS including exempting various types of companies from reporting, clarifying the instructions, and eliminating one item from the schedule. Each of the comments is discussed below.

Exemptions from NFIS reporting. Two commenters requested exemptions for Regulation K, section 211.23(f)(3) (incidental activities) companies and another commenter suggested that the Board exempt section 4(c)(8) subsidiaries of section 2(h) (of the Bank Holding Company Act) companies from filing the NFIS because section 2(h) companies are themselves exempt. These commenters also requested that section 4(c)(9) companies be exempt from filing the NFIS. However, section 4(c)(8) and section 4(c)(9) companies are active financial entities in the United States and are subject to the same rules as U.S. subsidiaries operating under the Bank Holding Company Act. The incidental activities covered under section 211.23(f)(3) typically involve brokerage, investment advisory, and foreign exchange operations. The Federal Reserve believes that the NFIS information should be provided on these companies because they are engaged in financial activities in the United States and their parent FBOs are subject to supervision and regulation by the Federal Reserve. Thus, the Board believes that 4(c)(8), 4(c)(9), and incidental-activities companies should file the NFIS.

A commenter suggested that companies whose shares are held by the FBO as a result of debts previously contracted or in a fiduciary capacity should be exempt from filing the NFIS. The Board agrees that individual holdings should be exempt. However, DPC subsidiaries and companies formed specifically to hold fiduciary entities should file in the same manner as other companies.

Submitting a consolidated NFIS. A commenter stated that the Board proposed to significantly limit the conditions under which NFIS statements can be submitted on a consolidated basis, and asked that FBOs not be required to seek annual prior approval from Federal Reserve Banks. Rather, they favored gaining initial approval once those conditions were met and for as long as they remained in effect. This commenter further requested that Federal Reserve Banks be given the discretion to make exceptions to the consolidation rules. The Federal Reserve concurred and has amended the NFIS instructions.

Book value of nonbank subsidiaries on the NFIS. Five commenters noted that the amount at which a nonbank subsidiary is carried on the books of the FBO is highly confidential in some countries and should be collected in the FR 2068. After review, the Board decided that this information is not critical, and deleted the item from the form.

Fiscal-year reporting on the NFIS. A commenter asked that the Board clarify in the instructions to the NFIS that financial information may be prepared as of the end of the fiscal year of the nonbank subsidiary and not as of the end of the fiscal year of the FBO. The instructions have been clarified.

FR Y-7A

The FR Y-7A will collect structure information that was previously reported in Section II of the FR Y-7. Apart from making this a stand-alone report, two initially proposed revisions to the collection process were to collect the information on a flow basis and to implement exception reporting. Flow-basis reporting would have allowed the Federal Reserve to recommend eliminating the FR 4002. Commenters indicated that flow-basis reporting would be very burdensome. The Federal Reserve agreed that flow basis reporting would be burdensome and dropped this revision. However, this required dropping the proposal to discontinue the FR 4002. Annual exception reporting is designed to reduce burden and will be implemented. Annual exception reporting requires completing the entire FR Y-7A only once. In subsequent years, the Federal Reserve Bank will provide the FBO with a printout of its previously submitted structure information. The FBO will review the printout and annotate the information to indicate changes, instead of completing an entire report each year. This is helpful for those banks whose operations are not highly automated, and also may ease the burden of translating the report into English. Other comments included a request to modify Regulation K to exempt certain holdings from reporting, to refine the General Instructions of the FR Y-7A, and to clarify the instructions on reporting DPC shareholdings, fiduciary holdings, and dormant companies.

Flow-basis reporting. The Federal Reserve reviews the structure and activities of FBOs to determine if they are in compliance with applicable statutes and regulations. The Board initially proposed collecting information in Section II (''Activities Conducted in the United States'') of the

old FR Y-7 in a stand-alone report, the FR Y-7A, which would consist of two items: ''U.S. Banking Activities'' and ''U.S. Nonbanking Activities.'' The Board further proposed that existing reporters complete both items in the first year and that new reporters complete both items at the time of their first filing. Subsequent changes in the information originally provided would be reported to the appropriate Federal Reserve Bank on a flow basis; that is, within thirty calendar days of such changes.

However, commenters objected to the burden associated with flow-basis reporting and asked that current reporting requirements be continued. They stated that the proposed reporting requirements would be very burdensome, particularly since FBOs would need to poll their affiliates regularly to determine organizational changes. They stated that not every structure and activity change is regularly reported to the parent organization. In addition, although the statutory control threshold is 25 percent or more in the United States, the control threshold in many other nations is 50 percent. Under U.S. statutes, when ownership of an affiliate reaches 25 percent, the affiliate would normally be considered a subsidiary, but in other countries it might be considered an ''investment''. The FBO may not have the legal authority to require information from an affiliate in which its ownership is only 25 percent.

Although the Federal Reserve would prefer to have this information reported as changes occur, the burden on the reporters outweighs the benefits to the Federal Reserve of receiving it within thirty calendar days of each change. Accordingly, the Board dropped the proposal to require flow-basis reporting. However, structure changes that require monitoring for compliance with the Bank Holding Company Act must continue to be reported within thirty days of the end of each quarter on the FR 4002, as required by Regulation K; all other changes must be reported annually on the FR Y-7A.

Request to modify Regulation K. A commenter stated that the costs of flow basis reporting would exceed the benefits of discontinuing the FR 4002, and requested modification of section 211.23(h) of Regulation K. Section 211.23(h) requires reporting, within thirty days of the end of a quarter, of all newly acquired shares of companies engaging in activities in the United States or of any U.S. activities commenced by companies in which the FBO already owns shares. Thus, this section requires the FBO to report information collected in the FR 4002. The requested modification would exempt respondents from reporting investments or activities permitted under section 211.23(f)(5), activities that are not incidental to international banking.

Reporting of non-voting equity interests in excess of 25 percent of any class of non-voting shares. The Federal Reserve initially recommended that FBOs report on the FR Y-7A investments of 25 percent or more of any class of non-voting equity of banks, bank holding companies, and other companies. Commenters said that reporting should not be required since the statutory control indicia normally do not apply to non-voting shares. The Board disagreed and remains concerned with foreign ownership of U.S. financial institutions of this magnitude, irrespective of the non-voting status of the shares. Several commenters indicated that reporting such non-voting interests in U.S. companies, other than banks and bank holding companies, would represent a significant increase in burden. In the interest of reducing burden, reporting will be limited to U.S. banks and bank holding companies, including all types of non-voting interests such as ''equity kickers''. This conforms to the reporting requirements of the Bank Holding Company Report of Changes in Investments and Activities (FR Y-6A; OMB No. 7100-0124) for domestic bank holding companies. One commenter requested that if non-voting equity interests must be reported then the requirement not be made retroactive. The Board decided to make the requirement retroactive so that the Federal Reserve will be cognizant of all such control situations. If an FBO cannot produce this information in a timely manner, a reasonable extension of time may be granted.

Reporting of shares held as a result of debts previously contracted. Comments were made on two revisions to how DPCs are reported. One commenter objected to the amount of information required about each DPC and proposed that the Board require only a listing of such holdings. The Board did not agree that a simple listing would provide sufficient information for monitoring these holdings. Another commenter stated that lowering the threshold for reporting DPCs, from ownership or control of 25 percent of any class of voting shares to ownership or control of 5 percent, is burdensome, especially when non-U.S. companies are involved, and asked that the 5 percent threshold be applied to only U.S. banking and nonbanking offices and subsidiaries. The commenters noted that in addition to the increase in the number of reportable holdings, the information would be difficult to obtain because these companies may be located worldwide. Further, the FBO may not have the authority to require these companies to share information. The Board decided to lower the threshold to 5 percent to ensure consistent treatment of domestic and foreign banking organizations (''national treatment'') and to maintain consistency with FR Y-6A reporting requirements.

General Instructions. A commenter recommended clarifying the General Instructions to the FR Y-7A to distinguish companies that do business in the United States from those that have no U.S. presence, suggesting that the reporting requirements apply only to all U.S. companies and those non-U.S. companies that engage in business in the United States. The Board agreed and made the clarification. Another commenter noted that the list of reportable companies on page 1 of the instructions to the FR Y-7A is confusing and asked that it be eliminated. The Board has clarified the instructions. Two other commenters asked that the term ''manages'' be deleted from the definition of control since the term's definition differs from the statutory definition. In considering this comment, the Board determined that the instruction was redundant and deleted it.

Instructions on shares held in a fiduciary capacity. A commenter suggested that the Board modify the General Instructions to the FR Y-7A so the instructions state more explicitly the requirement that FBOs disclose fiduciary holdings of shares only under either of the following two conditions:

(1) More than 5 percent of the shares of a company are held in a fiduciary capacity for the benefit of the foreign banking organization, its shareholders, or its employees; or

(2) More than 5 percent of the shares in U.S. banks and bank holding companies are held in a fiduciary capacity by a subsidiary of the foreign banking organization that has the sole discretion to vote the shares.

This commenter also asked that the Board revise the instructions so that fiduciary holdings held for the benefit of employees or shareholders are reported only if they are held for the employees or shareholders as a class. The Board believes that the instructions adequately address the statutory and regulatory factors regarding fiduciary holdings. These instructions are similar to those provided for bank holding company reporters and therefore are consistent with the policy of national treatment.

Instructions on reporting of shares held in dormant companies. A commenter requested that the Federal Reserve not require reporting of dormant companies in the FR Y-7A and suggested instead to require an FBO to report the cessation and re-commencement of a business activity. However, the disposition of such holdings would not be known if the FBO stopped reporting them. Such holdings need not be reported until the company becomes active, but once active, it must be reported until divested, even if it becomes dormant again.

FR 2068

Five revisions were proposed for the FR 2068. After reviewing comments, one change was dropped and another was modified.

Filing exemption. The Federal Reserve eliminated the filing exemption for small companies in light of financial problems that developed in financial institutions with a relatively small presence in the United States. This added thirty-one respondents to the panel.

Earnings item. The Federal Reserve eliminated earnings information from the FR 2068 because this information is reported in the FR Y-7.

Past due loans. FBOs now must report specified information on past due loans to replace similar information previously submitted on a free-form basis in the FR 2068. The initial proposal provided three alternative methods for reporting this information. This has been reduced to two alternatives, with no loss of flexibility for the respondent, by rewording the instructions. An FBO may submit either an abbreviated table of information which is similar to that collected from domestic banks, or it may submit the same type of information that is provided to its home country supervisor. Notwithstanding these alternatives, a commenter noted that certain banks do not routinely collect this information on a past-due basis, but on the basis of whether interest is accruing. The Federal Reserve believes that the instructions for the past-due loans item provide sufficient flexibility; furthermore, the General Instructions to the FR 2068 state that FBOs may request permission to provide substitute information when undue burden is imposed by a particular item.

Filing directly with the Board. A proposed revision to the filing procedures of the FR 2068 would have required the FBO to submit the information to the appropriate Federal Reserve Bank rather than directly to the Board. The procedure of filing directly with the Board was developed because the FBOs desired strict confidentiality. Several commenters strongly advocated that this procedure be retained. One commenter, although not in objection to filing with Federal Reserve Banks, asked that the same security standards used by the Board be implemented at the Federal Reserve Banks. Specifically, the commenter requested that only one Federal Reserve Bank receive a copy of the FR 2068, that the Federal Reserve Banks not permit other regulators to have access to the information, and that secure areas be set up for storing the information. In response to these comments, the Board has decided that the procedure of filing with the Board be retained.

Expanded organization chart. The organization chart provides a listing of all corporate components of the foreign banking organization. The Federal Reserve initially proposed reporting both U.S. and non-U.S. interests of the principal shareholders of the FBO. Commenters noted that this requirement would significantly increase burden, and asked that the organization chart show only those foreign interests that are directly or indirectly engaged in business in the United States. Commenters also noted that a foreign banking organization normally cannot compel a shareholder to disclose personal information. In response to comments regarding burden and possible legal constraints with respect to collection of information on non-U.S. entities, the Federal Reserve dropped this reporting requirement with regard to strictly non-U.S. companies.

General Comments

Commenters addressed several matters regarding both the FR Y-7 and the FR 2068, including the reporting universe, implementation date, and glossary.

Instructions - Who Must Report. In response to a commenter, the following clarification has been added to the introduction to the General Instructions: ''The Annual Report of foreign banking organizations is required to be filed by companies that are directly or indirectly engaged in the business of banking in the United States.'' Also, the term ''organized under the laws of a foreign country'' was deleted from the ''Who Must Report'' section, because an FBO could be organized, for example, under Delaware laws, and operate overseas and in the United States. The instructions thus revised will conform to the statutory definition of a required reporter.

Implementation date. A commenter requested that the NFIS section of the FR Y-7 and the FR Y-7A be implemented as of December 31, 1995. This request will be accommodated because the Board intends to use this implementation date for all sections of the reports. FBOs whose fiscal years end prior to December 30, 1995, will use the existing FR Y-7 and FR 2068 forms.

Glossary. A glossary has been prepared as part of the instructions to clarify certain terms and to reduce the number of footnotes in the forms. In response to comments, the Federal Reserve expanded the glossary to provide information on applicable statutes and regulations, defined additional terms, and clarified several definitions.

Respondent Burden. Commenters provided various burden estimates, all of which were substantially higher than the Federal Reserve estimates. One commenter stated that the Federal Reserve's combined burden estimate for the FR Y-7 and FR 2068 of 41 hours was much lower than the actual time spent by some FBOs. However, this commenter's estimate represented the burden on some of the larger and more complex organizations. The Federal Reserve's burden estimates are an average across all sizes of institutions and incorporate the higher burdens of large institutions. The Federal Reserve believes that the original proposal, having been substantially modified in response to comments, does not significantly increase the burden averaged across all 323 respondents.

Apart from total burden estimates, there were three specific proposed changes that commenters stated would significantly increase burden. One of these proposed changes was dropped and one was scaled back.

(1) The proposal that structure changes be reported on the proposed FR Y-7A on a flow basis, that is, within thirty days of their occurrence, was considered quite burdensome by commenters. The Federal Reserve decided not to require flow-basis reporting and dropped the proposal to discontinue the FR 4002, in which structure changes are reported quarterly.

(2) The proposal that FBOs report, in the FR Y-7A, investments of 25 percent or more of any class of non-voting equity of any company was scaled back. Now respondents report only such investments in U.S. banks and bank holding companies.

(3) In the existing FR Y-7, an FBO must report each company in which it owns or controls 25 percent or more of any class of voting shares as a result of debts previously contracted. The Federal Reserve changed the threshold

at which these shares are reportable, from 25 percent to 5 percent.

The burden estimate for the existing FR Y-7 is 19.5 hours per response. Based on that estimate, along with net new burden, the Federal Reserve estimates that the collective burden for the FR Y-7 and FR Y-7A increased by one hour, to 20.5 hours per response. Considered separately, burden for the FR Y-7 is 12.0 hours and the FR Y-7A is 8.5 hours. The burden estimate for the FR 2068 is unchanged from 20.5 hours per response.

Final approval under OMB delegated authority of the extension, without revision, of the following report:

2. Report title: Notification Pursuant to Section 211.23(h) of Regulation K on Acquisitions by Foreign Banking Organizations
Agency form number: FR 4002
OMB Docket number: 7100-0110
Frequency: On occasion
Reporters: Foreign Banking Organizations
Annual reporting hours: 80
Estimated average hours per response: 0.5
Number of respondents: 160
Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. §§1844(c), 3106, and 3108(a)].

This report is required within thirty days of the end of a quarter during which an FBO acquires shares of a company that engages, directly or indirectly, in business in the United States, or during which a foreign subsidiary of the FBO commences direct activity in the United States.

Abstract: The Federal Reserve, in its original proposal to revise the FR Y-7 and FR 2068, proposed to eliminate the FR 4002, because proposed changes to the FR Y-7 would have made the FR 4002 redundant. (See Vol. 60, FR 1779, January 5, 1995.) After review of public comments, the Federal Reserve modified the originally proposed revisions to the FR Y-7 such that it became necessary to retain the FR 4002.

Board of Governors of the Federal Reserve System, December 5, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30036 Filed 12–8–95; 8:45 am]

Billing Code 6210–01–F

Proposed Agency Information Collection Activities; Comment

AGENCY: Board of Governors of the Federal Reserve System (Board).
ACTION: Notice and request for comment.

BACKGROUND: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. Proposed revisions to the following currently approved collections of information have received approval from the Federal Financial Institutions Examination Council (FFIEC), of which the Board is a member, and are hereby published for comment. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the proposed revisions should be modified prior to the agencies' submission of them to OMB for review and approval. Comments are invited on:

(a) Whether the proposed revisions to the following collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 9, 1996.

ADDRESSES: Interested parties are invited to submit written comments the agency listed below. All comments should refer to the OMB control number.

Written comments should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed revisions to the collections of information may be requested from the agency clearance officers whose name appears below.

Mary M. McLaughlin, Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Proposal to revise the following currently approved collection of information:

Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks
Form Number: FFIEC 002
OMB Number: 7100-0032.
Frequency of Response: Quarterly.
Affected Public: U.S. branches and agencies of foreign banks.
Estimated Number of Respondents: 557
Estimated Time per Response: 22.40 burden hours.
Estimated Total Annual Burden: 49,907 burden hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (i.e., small U.S. branches and agencies of foreign banks) are affected.

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies (i.e., the Board, the Office of the Comptroller of the

Currency, and the Federal Deposit Insurance Corporation).

Current Actions: The proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) that are the subject of this notice have been approved by the FFIEC for implementation as of the March 31, 1996, report date. Nonetheless, as is customary for FFIEC 002 reporting changes, U.S. branches are advised that, for the March 31, 1996, report date, reasonable estimates may be provided for any new or revised item for which the requested information is not readily available.

The proposed revisions are summarized as follows:

New Items

FFIEC 002 items in the following areas would be added:

(1) Trading Assets and Liabilities

When off-balance-sheet derivative contracts held by U.S. branches for trading purposes are periodically marked to market (or the lower of cost or market, as appropriate), this process results in the recording of the fair values of derivatives that are in gain and loss positions as on-balance-sheet assets and liabilities, respectively. In order to monitor the magnitude of these fair values and changes therein, new items would be added for the reporting of these two amounts in the Memoranda section of Schedule RAL, ''Assets and Liabilities.''

(2) Past Due Derivatives

The FFIEC 002 does not currently require disclosures about off-balance sheet derivative contracts where the counterparty is not performing in accordance with the contractual terms. Although the number of such contracts is believed to be limited, the disclosure of exposures associated with such contracts will highlight, for supervisory purposes, the most immediate risks faced by a U.S. branch from its involvement with off-balance-sheet derivatives. Information about these past due derivatives would be added to the Memoranda section of Schedule N, ''Past Due, Nonaccrual, and Restructured Loans.'' Amounts would be separately reported for derivatives that are past due 30 through 89 days and for those past due 90 days or more. Reported amounts associated with derivatives that are past due 90 days or more would also include information about derivatives that, while not technically past due, are with counterparties that are not expected to pay the full amounts owed to the institution under the derivative contracts. As with the information U.S. branches currently report in Schedule N, individual U.S. branch information on derivatives for which payments are delinquent would be treated as confidential.

In these new items, U.S. branches would first report the book value of any amounts carried as assets on the balance sheet that are related to those off-balance sheet derivatives for which any required payment from the counterparty is either past due 30 through 89 days or past due 90 days or more. In addition, in order to indicate the relative size and volume of those contracts where the counterparty is not performing, separate Memoranda items would be provided for reporting the current replacement cost (if positive) for those contracts that are past due 30 through 89 days and for those that are past due 90 days or more.

Instructional Changes

Changes, which may affect how some banks report certain information on the FFIEC 002, would be made to the instructions as follows.

(1) The FFIEC 002 Glossary entry for ''Trading Account'' would be revised to incorporate parallel changes to the FFIEC 031 instructions regarding report changes implemented since 1994 on trading assets and liabilities and the treatment of off-balance-sheet derivatives held for trading purposes. In addition, the Glossary entry's discussion of the accounting for transfers to or from a trading account would be brought into conformity with FASB Statement no. 115, ''Accounting for Certain Investments in Debt and Equity Securities.''

(2) The instructions for the reporting of commercial and industrial loans with remaining maturity of

(i) one year or less and

(ii) of more than one year in the loan schedule (Schedule C), would be clarified to exclude nonaccrual status loans in a manner consistent with the reporting of maturity and repricing data for loans and leases on the FFIEC 031. Clarifications or other conforming changes would also be made to several other instructions.

Request for Comment

Comments submitted in response to this Notice will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, December 5, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–30037 Filed 12–8–95; 8:45 am]

Billing Code 6210–01–F

Caisse Nationale de Credit Agricole, S.A.; Notice to Engage in Certain Nonbanking Activities

Caisse Nationale de Credit Agricole, S.A., Paris, France (Notificant), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage through CAL FP (US), Inc., New York, New York (Company), in the following activities:

1. Acting as agent in the private placement of securities;

2. Acting as riskless principal in the purchase and sale of all types of securities on behalf of customers;

3. Providing securities brokerage services pursuant to 12 CFR 225.25(b)(15)(i) and (ii);

4. Providing investment advisory services pursuant to 12 CFR 225.25(b)(4);

5. Acting as broker or agent and providing advisory services with respect to interest rate and currency swaps and swap derivative products, and swaps, swap derivative products and over-the-counter options linked to certain commodities, stock, bond or commodity indices, a hybrid of interest rates and such commodities or indices, a specially tailored basket of securities selected by the parties, or single equity securities;

6. Providing advisory services, including discretionary portfolio management services, with respect to futures and options on futures on financial and nonfinancial commodities; and

7. Providing foreign exchange advisory and transactional services pursuant to 12 CFR 225.25(b)(17).

Notificant has stated that it anticipates that an affiliate of Company would act as principal in transactions with respect to which Company has provided advisory and/or transactional services. Company would provide the proposed services throughout the world.

Company is an indirect subsidiary of Credit Agricole Lazard Financial Products Limited, London, England (CALFP Holding). Notificant owns 75 percent of the capital of CALFP Holding, and Three Houses Investment Company, Limited, London, England

(Three Houses), owns the remaining 25 percent. Notificant and Three Houses have equal voting rights in CALFP Holding. Three Houses is controlled by Lazard Freres & Co., LLC, New York, New York, Lazard Freres et Cie, Paris, France, and Lazard Brothers & Co., Limited, London, England.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Notificant maintains that the Board previously has determined by regulation or order that the proposed activities are closely related to banking. See 12 CFR 225.25(b)(4), (15), (17) and (19); *Security Pacific Corporation*, 74 Fed. Res. Bull. 820 (1988); *J.P. Morgan & Company, Incorporated*, 80 Fed. Res. Bull. 151 (1994); Swiss Bank Corporation, 81 Fed. Res. Bull. 185 (1995); *CS Holding*, 81 Fed. Res. Bull. 803 (1995); *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989). Notificant has stated that Company would engage in the proposed activities in accordance with the limitations and conditions established by the Board in its regulations, related interpretations, and orders.

In order to approve the proposal, the Board also must determine that the proposed activities to be conducted by Notificant ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. 1843(c)(8). Notificant believes that the proposal would produce public benefits that outweigh any potential adverse effects. In particular, Notificant maintains that the proposal would enhance competition in the relevant markets and would enable Notificant to offer its customers a broader range of services. Notificant also maintains that its proposal would not result in any adverse effects in light of the commitments it has made to the Board, including commitments designed to address the Board's concerns over the separation of a banking organization's activities from the activities of a co-venturer. See *Banque Nationale de Paris*, 80 Fed. Res. Bull. 638 (1994); *The Chuo Trust and Banking Company*, 78 Fed. Res. Bull. 446 (1992).

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 29, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, December 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30038 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

First United Bancorporation, 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 January 8, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First United Bancorporation, Anderson, South Carolina; to acquire 100 percent of the voting shares of The Community Bank of Greenville, N.A., Greenville, South Carolina (in organization).

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Wilson Bank Holding Company, Lebanon, Tennessee; to acquire 50 percent of the voting shares of DeKalb Bank & Trust, Smithville, Tennessee (in organization).

Board of Governors of the Federal Reserve System, December 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30039 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

Rodney G. Joy, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of

Governors. Comments must be received not later than December 27, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Rodney G. Joy, Cranfills Gap, Texas; to acquire an additional 4.18 percent, for a total of 20.82 percent, and Bosque Bancshares, Inc. Employee Stock Ownership Plan, Rodney G. Joy, Trustee, Cranfills Gap, Texas, to acquire an additional 5.67 percent, for a total of 10.35 percent, of the voting shares of Bosque Bancshares, Inc., Cranfills Gap, Texas, and thereby indirectly acquire First Security State Bank, Cranfills Gap, Texas.

Board of Governors of the Federal Reserve System, December 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30040 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Notice of Proposal to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has given notice under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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 on the question whether commencement of the activity 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 December 28, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* in issuing commercial and standby letters of credit related to customers of The Foothill Group, Los Angeles, California, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and issuing shipping guarantees, pursuant to § 211.3(b)(1) of the Board's Regulation K.

Board of Governors of the Federal Reserve System, December 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30140 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

Storm Lake Security Bancorporation, 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 January 9, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Storm Lake Security Bancorporation, Storm Lake, Iowa; to become a bank holding company by acquiring 88.8 percent of the voting shares of Security Trust & Savings Bank, Storm Lake, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Magna Group, Inc., St. Louis, Missouri; to merge with River Bend Bancshares, Inc., East Alton, Illinois, and thereby indirectly acquire Illinois State Bank & Trust, East Alton, Illinois.

Board of Governors of the Federal Reserve System, December 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30141 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

Summit Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has given notice under § 225.23(a)(2) or (e) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (e)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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 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 this application must be received not later than December 28, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Summit Bancorp, Inc., Johnstown, Pennsylvania; to acquire Cambria Thrift Consumer Discount Company, Ebensburg, Pennsylvania, and thereby engage in making and servicing loans as a consumer finance company, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y. These activities will be conducted throughout Cambria County, Pennsylvania.

In connection with this acquisition, Notificant also has applied to establish a new subsidiary, Value Finance Company, Johnstown, Pennsylvania, which will also make and service loans through Cambria Thrift Consumer Discount Company.

Board of Governors of the Federal Reserve System, December 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30142 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

Union Planters Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has given notice under § 225.23(a)(2) or (e) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (e)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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 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 this application must be received not later than December 28, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire Valley Federal Savings Bank, Sheffield, Alabama, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30143 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

UJB Financial Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 27, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. UJB Financial Corp., Princeton, New Jersey; to acquire UJB Commercial Corp., Hackensack, New Jersey, and thereby engage in making, acquiring or servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made, for example, by commercial finance or factoring companies, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and to engage in the leasing of personal property to the extent, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. The Shorebank Corporation, Chicago, Illinois; to acquire the Austin Labor Force Intermediary, Chicago, Illinois (ALFI), and thereby consolidate ALFI with and into its subsidiary, Neighborhood Institute, Chicago, Illinois, and thereby engage in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–30041 Filed 12–8–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the

Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 110695 AND 111795

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Ford Motor Company, Volkswagen AG, Autolatina America, Inc	96–0155	11/07/95
Appalachian Basin Partners, L.P., Equitable Resources, Inc., Equitable Resources Energy Company	96–0187	11/07/95
Compaq Computer Corporation, Walter Thirion, Thomas-Conrad Corporation	96–0192	11/07/95
Saratoga Partners III, L.P., Fisons plc (a British corporation), J&W Scientific Incorporated	96–0198	11/07/95
Sears, Roebuck and Co., Fay's Incorporated, Wheels Discount Auto Supply, Inc	96–0209	11/07/95
The Manitowoc Company, Inc., Trivest Institutional Fund, Ltd., The Shannon Group Inc	96–0204	11/08/95
Guilford Mills, Inc., Bruno Hofmann, Hofmann Laces, Ltd	96–0084	11/09/95
Century Communications Corp., American Cable TV Investors 4, Ltd., American Cable TV Investors 4, Ltd	96–0168	11/09/95
Unitog Company, Irving Laker, Act-Tex Corporation	96–0179	11/09/95
U.F. Holdings, Inc., The Fuji Bank, Limited (a Japanese company), Fixture Holding Company	96–0185	11/09/95
Catholic Healthcare West, Sierra Nevada Memorial-Miners Hospitals, Inc., Sierra Nevada Memorial-Miners Hospitals, Inc	96–0087	11/12/95
Wingate Partners II, L.P., Leonard Turnage, ITC Holding Company, Inc	96–0258	11/13/95
Harley-Davidson, Inc., Eaglemark Financial Services, Inc. Eaglemark Financial Services, Inc	96–0272	11/13/95
EMC Corporation, McDATA Corporation, McDATA Corporation	96–0201	11/14/95
Diamond Multimedia Systems, Inc., Dennis C. Hayes, Hayes Microcomputer Products, Inc	96–0207	11/14/95
Dennis C. Hayes, Diamond Multimedia Systems, Inc., Diamond Multimedia Systems, Inc	96–0208	11/14/95
VTEL Corporation, Peirce-Phelps, Inc., Peirce-Phelps, Inc	96–0213	11/14/95
WorldCom, Inc., James F. Corman, Touch 1 Communications, Inc	96–0218	11/14/95
Philip Morris Companies Inc., Del Monte Foods Company, Del Monte Corporation	96–0222	11/14/95
Collins & Aikman Corporation, Ronald T. Larizza, Larizza Industries, Inc	96–0225	11/14/95
TSB Group plc, Lloyds Bank plc, Lloyds Bank plc	96–0228	11/14/95
Erik Hvide Trust, OMI Corp., OMI Hudson Transport, Inc	96–0231	11/14/95
Erik Hvide Trust, General Electric Company, General Electric Capital Corporation	96–0232	11/14/95
Theodore Ammon, Brian Mason, Laser Tech Color, Inc	96–0234	11/14/95
OrNda Health Corp., Houston Northwest Medical Center, Inc., Houston Northwest Medical Center, Inc	96–0239	11/14/95
U.S. Office Products Company, Carithers-Wallace-Courtenay, Incorporated, Carithers-Wallace-Courtenay, Incorporated	96–0243	11/14/95
Heritage Media Corporation, DIMAC Corporation, DIMAC Corporation	96–0251	11/14/95
Den norske stats oljeselskap a.s., Aran Energy plc, Aran Energy plc	96–0254	11/14/95
Pearson plc (a British Corporation), Allied Communications, Inc., Allied Communications, Inc	96–0267	11/14/95
Tribune Company, Gaylord Entertainment Company, New Gaylord Broadcasting Company, L.P	96–0191	11/15/95
American General Corporation, Independent insurance Group, Inc., Independent Insurance Group, Inc	96–0256	11/15/95
The Cleveland Clinic Foundation, Sisters of St. Joseph of the Third Order of St. Francis, Marymount Health Care Systems	96–0263	11/15/95
Bruce and Debra Scott, Republic Waste Industries, Inc., Republic Waste Industries, Inc	96–0273	11/15/95
Robert E. and Kathryn Gracey Cannon, Buckeye Cellulose Corporation, Buckeye Cellulose Corporation	96–0283	11/15/95
IMI plc, Tremont Corporation, Titanium Metals Corporation	96–0214	11/16/95
Tremont Corporation, IMI plc, IMI plc	96–0215	11/16/95
Royal Plastics Group Limited, Novo Industries, Inc., Novo Industries, Inc	96–0223	11/16/95
William B. Sansom, Nash-Finch Company, Thomas & Howard Company of Hickory, Inc	96–0151	11/17/95
Citizens Utilities Company, American Cable TV Investors 4, Ltd., American Cable TV Investors 4, Ltd	96–0169	11/17/95
Wells Fargo & Company, First Interstate Bancorp, First Interstate Bancorp	96–0183	11/17/95
Atlantic American Corporation, Fuqua Enterprises, Inc., American Southern Insurance Company	96–0253	11/17/95
Newco, Cable TV Fund 11–B, Ltd, Cable TV Fund 11–B, Ltd	96–0257	11/17/95
Ronald O. Perelman, James E. McCrink, Seatt Corporation, Jasan Products, Ltd	96–0260	11/17/95
Alberto-Culver Company, St. Ives Laboratories, Inc., St. Ives Laboratories, Inc	96–0269	11/17/95
Lee G. Grown, Republic Waste Industries, Inc., Republic Waste Industries, Inc	96–0270	11/17/95
Boston Ventures Limited Partnership IVA, Apollo Investment Fund, L.P., National Law Publishing Company, Inc	96–0274	11/17/95
Boston Ventures Limited Partnership IV, Apollo Investment Fund, L.P., National Law Publishing Company, Inc	96–0275	11/17/95
AlliedSignal Inc., Exxon Corporation, Paxon Polymer Company L.P	96–0276	11/17/95
Exxon Corporation, AlliedSignal Inc., Paxon Polymer Company L.P	96–0277	11/17/95
Duke Seabridge Limited, Smith Brothers Farms, Inc., Smith Tractor & Equipment Co. and Olympic Tracks and	96–0278	11/17/95
General Motors Corporation, STM Holding Corporation, STM Mortgage Company	96–0279	11/17/95
Mr. Jason Barzilay, Creative Technology, Ltd., Creative Technology, Ltd	96–0284	11/17/95
Creative Technology, Ltd., Reveal Computer Products, Inc., Reveal Computer Products, Inc	96–0285	11/17/95
The Robert Rosenkranz Trust, SIG Holdings, Inc., SIG Holdings, Inc	96–0286	11/17/95
Devon Energy Corporation, Union Oil Company of California, Union Oil Company of California	96–0293	11/17/95
Robert B. McKeon, Bliss & Laughlin Industries Inc., Bliss & Laughlin Industries Inc	96–0297	11/17/95
United States Surgical Corporation, E–Z–EM, Inc., Surgical Dynamics Inc	96–0300	11/17/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 110695 AND 111795—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cox Enterprises, Inc., James M. Moran, Greater Auction Group, Inc	96–0301	11/17/95
Trizec Corporation Ltd. (a Canadian corporation), Trizec Corporation Ltd., HSD/Horton Associates	96–0306	11/17/95
Madison Dearborn Capital Partners, L.P., Madison Dearborn Capital Partners, L.P., Buckeye Florida, L.P	96–0311	11/17/95
Madison Dearborn Capital Partners, L.P., The Proctor & Gamble Company, Buckeye Florida, Limited Partnership	96–0312	11/17/95
Mr. Kevin H. Azzouz, Seagate Technology, Inc., Seagate Technology, Inc	96–0313	11/17/95
Cox Enterprises, Inc., Dennis E. Hecker, The Greater Auction Group, Inc	96–0326	11/17/95

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–30083 Filed 12–8–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering Laboratory Health Effects Subcommittee and Idaho National Engineering Laboratory Worker Epidemiologic Study Public Meetings: Date Change

Federal Register Citation of Previous Announcement: 60 FR 58629—dated November 28, 1995.

SUMMARY: Notice is given that the meeting date for the Idaho National Engineering Laboratory Worker Epidemiologic Study Public Meeting (INEL), of the Centers for Disease Control and Prevention (CDC) has changed. The meeting time, place, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

ORIGINAL DATE: December 13, 1995.

NEW DATE: December 12, 1995.

CONTACT PERSONS FOR MORE INFORMATION: Arthur J. Robinson, Jr., or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: December 6, 1995.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–30168 Filed 12–7–95; 11:22 am]

BILLING CODE 4163–18–M

Health Care Financing Administration

[ORD–081–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: August and September 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for Medicaid demonstration projects submitted to the Department of Health and Human Services during the months of August and September 1995 under the authority of section 1115 of the Social Security Act. This notice also lists proposals that were approved, disapproved, pending, or withdrawn during this time period. (This notice can be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

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: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) The principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; 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.

As part of our procedures, we publish a notice in the Federal Register with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Months of August and September 1995

A. Comprehensive Health Reform Programs

1. New Proposals

No new proposals were received during the month of August.

The following comprehensive health reform proposals were received during the month of September.

Demonstration Title/State: The Georgia Behavioral Health Plan—Georgia.

Description: Georgia proposes to provide behavioral health services under a managed care system through the section 1115 demonstration. The plan would be implemented by regional boards that would contract with third party administrators to develop a network of behavioral health providers. The currently eligible Medicaid population would be enrolled in the program and would have access to a full range of behavioral health services. Once the program realizes savings, the State proposes to expand coverage to individuals who become newly eligible.

Date Received: September 1, 1995.

State Contact: Margaret Taylor, Coordinator for Strategic Planning, Department of Medical Assistance, 1 Peachtree Street NW., Suite 27–100, Atlanta, GA 30303–3159, (404) 657–2012.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: State of Texas Access Reform (STAR)—Texas.

Description: Texas is proposing a section 1115 demonstration that will restructure the Medicaid program using competitive managed care principles. A focal point of the proposal is to utilize local governmental entities (referred to as Intergovernmental Initiatives (IGIs)) and to make the IGI responsible for designing and administering a managed care system in its region. Approximately 876,636 new beneficiaries would be served during the 5-year demonstration in addition to the current Medicaid population. Texas proposes to implement the program in June 1996.

Date Received: September 6, 1995.

State Contract: Cathy Rossberg, State Medicaid Office, P.O. Box 13247, Austin, TX 78711, (512) 502–3224.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending Proposals

Demonstration Title/State: Better Access for You (BAY) Health Plan Demonstration—Alabama.

Description: Alabama proposes to create a mandatory managed care delivery system in Mobile County for non-institutionalized Medicaid beneficiaries and an expansion population of low-income women and children. The network, called the Bay Health Network, would be administered by the PrimeHealth Organization, which is owned by the University of South Alabama Foundation. The State also proposes to expand family planning benefits for pregnant women whose income is less than 133 percent of the Federal poverty level.

Date Received: July 10, 1995.

State Contact: Vicki Huff, Director, Managed Care Division, Alabama Medicaid Agency, PO. Box 5624, Montgomery, AL 36103–5624, (334) 242–5011.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to individuals with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995.

State Contact: Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, AZ 85034, (602) 271–4422.

Federal Project Officer: Joan Peterson, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, IL 62763, (217) 782–2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a ''managed cooperation demonstration project'' in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll persons currently eligible in the Aid to Families with Dependent Children (AFDC) and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact: Karl Hockenbarger Kansas Department of Social and Rehabilitation Services, 915 Southwest Harrison Street, Topeka, KS 66612, (913) 296–4719.

Federal Project Officer: Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Kentucky Health Care Partnership—Kentucky.

Description: Kentucky proposes to enroll all non-institutional AFDC, AFDC-related, and aged, blind, and disabled Medicaid-eligible individuals in regional managed care networks operated by a sole-source contractor. The proposed start date of the demonstration is December 1, 1995.

Date Received: June 19, 1995.

State Contact: Larry A. McCarthy, Director, Program Development and Budget, Department of Medicaid Services, 275 East Main Street, Frankfort, KY 40621, (406) 444–4540.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850,

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand Medicaid eligibility to persons with incomes up to 250 percent of the Federal poverty level; those with incomes above 133 percent of the Federal poverty level would pay all or a portion of premiums.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, P.O. Box 2870, Baton Rouge, LA 70821–2871, (504) 342–2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850,

Demonstration Title/State: Missouri.

Description: Missouri proposes to require Medicaid beneficiaries to enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the

Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, MO 65102–6500, (314) 751–6922.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low-income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, NH 03301–6505, (603) 271–4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Partnership Plan—New York.

Description: New York proposes to move most of the currently eligible Medicaid population and Home Relief (General Assistance) populations from a primarily fee-for-service system to a managed care environment. The State also proposes to establish special needs plans to serve individuals with HIV/AIDS and certain children with mental illnesses. The proposed enrollment date for Home Relief and AFDC recipients is November 1, 1995, followed by a 1-year enrollment period for the supplemental security income (SSI) population beginning January 1, 1997.

Date Received: March 17, 1995.

State Contact: Richard T. Cody, Deputy Commissioner, Division of Health and Long Term Care, 40 North Pearl Street, Albany, NY 12243, (518) 474–9132.

Federal Project Officer: Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma proposes to implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized Medicaid beneficiaries will be enrolled during the first 2 years of the project.

Date Received: January 6, 1995.

State Contact: Dr. Garth Splinter, Oklahoma Health Care Authority, Lincoln Plaza, 4545 North Lincoln Blvd., Suite 124, Oklahoma City, OK 73105, (405) 530–3439.

Federal Project Officer: Helaine I. Fingold, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Section 1115 Demonstration Waiver for Medicaid Expansion—Utah.

Description: Utah proposes to expand eligibility for Medicaid to all individuals with incomes up to 100 percent of the Federal poverty level (subject to limited cost sharing) and to enroll all Medicaid beneficiaries in managed care plans. The State also proposes to streamline eligibility and administrative processes and to develop a subsidized small employer health insurance plan.

Date Received: July 5, 1995.

State Contact: Michael Deily, Acting Division Director, Utah Department of Health, Division of Health Care Financing, 288 North 1460 West, P.O. Box 142901, Salt Lake City, UT 84114–2901, (801) 538–6406.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Awards of Waivers Pending)

No conceptual proposals were approved during the months of August and September.

4. Approved Grant Proposals (Award of Waivers Pending)

No grant proposals were awarded during the months of August and September.

5. Approved Proposals

No proposals were approved during the months of August and September.

6. Disapproved Proposals

No comprehensive health reform proposals have been disapproved since January 1, 1993.

7. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the months of August and September.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

No new proposals were received during the month of August.

The following proposal was received during the month of September:

Demonstration/Title: Integrated Care and Financing Project Demonstration—Colorado.

Description: Colorado proposes to conduct an Integrated Care and Financing Project demonstration. Specifically, the Colorado Department of Health Care Policy and Financing proposes to add institutional and community-based long-term care services to a health maintenance organization (HMO) and make the HMO responsible for providing comprehensive medical and supportive services through one capitated rate. The project would include all Medicaid eligibility groups, including individuals with dual eligibility.

Date Received: September 28, 1995.

State Contact: Dann Milne, Office of Long-Term Care System Development, State of Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

Federal Contact: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending Proposals.

Demonstration Title/State: Alternatives in Medicaid Home Care Demonstration—Colorado.

Description: Colorado proposes to conduct a pilot project that eliminates the restriction on provision of Medicaid home health services in locations other than the beneficiary's place of residence. The proposal would also

permit nursing aides to perform functions that historically have been provided only by skilled nursing staff. Medicaid beneficiaries participating in the project will be adults (including both frail elderly clients and younger clients with disabilities) who can live independently and self-direct their own care. The project would provide for delegation of specific functions from nurses to certified nurses aides, pay nurses for shorter supervision and monitoring visits, and allow higher payments to aides performing delegated nursing tasks. Currently, home health agency nursing and nurse aide services are paid on a per visit basis. Each visit is approximately 2–4 hours in duration, and recipients must require skilled, hands-on care.

Date Received: June 3, 1995.

State Contact: Dann Milne, Director, Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

Federal Project Officer: Phyllis Nagy, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: Georgia submitted a section 1115 proposal entitled ''Georgia Children's Benefit Plan'' to provide preventive and primary care services to children aged 1 through 5 living in families with incomes between 133 percent and 185 percent of the Federal poverty level. The duration of the project is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street Northwest, Atlanta, GA 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: High Cost User Initiative—Maryland.

Description: Maryland proposes to implement an integrated case management system for high-cost, high-risk Medicaid beneficiaries.

Date Received: July 8, 1994.

State Contact: John Folkemer, Maryland Department of Health and Mental Hygiene, Office of Medical Assistance Policy, 201 West Preston Street, Baltimore, MD 21201, (410) 225–5206.

Federal Project Officer: William Clark, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level, and to provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact: Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, MI 48909, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Montana Mental Health Access Plan—Montana.

Description: Montana proposes to provide all mental health services for current Medicaid-eligible individuals through managed care and to expand Medicaid eligibility to persons with incomes up to 200 percent of the Federal poverty level. Newly eligible individuals would receive only mental health benefits, and would not be eligible for other health services under the demonstration. A single statewide contractor would provide the mental health services and also determine eligibility, perform inspections, and handle credentialing.

Date Received: June 16, 1995.

State Contact: Nancy Ellery, State Medicaid Director, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 North Sanders, Helena, MT 59604–4210, (406) 444–4540.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, P.O. Box 2348, Santa Fe, NM 87504–2348, (505) 827–3106.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, RI 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Eligibility Requirements Waiver—South Carolina.

Description: South Carolina proposes to extend Medicaid coverage for family planning services for 22 additional months to postpartum women with monthly incomes under 185 percent of the Federal poverty level. The objectives of the demonstration are to increase the number of reproductive age women receiving either Title XIX or Title X funded family planning services following the completion of a pregnancy, increase the period between pregnancies among mothers eligible for maternity services under the expanded eligibility provisions of Medicaid, and estimate the overall savings in Medicaid spending attributable to providing family planning services to women for 2 years postpartum. The duration of the proposed project would be 5 years.

Date Received: May 4, 1995.

State Contact: Eugene A. Laurent, Executive Director, State Health and Human Services Finance Commission, P.O. Box 8206, Columbia, SC 29202–8206, (803) 253–6100.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Wisconsin.

Description: Wisconsin proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid beneficiaries.

Date Received: March 9, 1994.

State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, WI 53707, (608) 266–0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were awarded during the months of August and September.

4. Approved Proposals

No proposals were approved during the months of August and September.

5. Disapproved Proposals

No proposals were disapproved during the months of August and September.

6. Withdrawn Proposals

No proposals were withdrawn during the months of August and September.

IV. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: November 30, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–30066 Filed 12–8–95; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Institute of Allergy and Infectious Diseases: Licensing Opportunity and/or Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of Influenza A PB2 Gene Technology

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health is seeking licensees and/or CRADA Collaborators for the joint research, development, evaluation, and commercialization of its influenza A polymerase basic 2 (PB2) patent portfolio. The inventions claimed in U.S. Patent Application Serial No. 08/123,933 (''Method for Generating Influenza A Viruses Bearing Attenuating Mutations in Internal Protein Genes,'' filed September 20, 1993), and its related patent applications, are available for either co-exclusive or non-exclusive licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under one or more CRADAs for important clinical and research applications described below in the Supplementary Information section.

DATES: License applications must be received on or before March 11, 1996. CRADA proposals should be received on or before April 11, 1996 *for priority consideration*. However, CRADA proposals submitted thereafter will be considered until a suitable CRADA Collaborator is selected.

ADDRESSES: CRADA proposals and questions about this opportunity should be addressed to: Claire T. Driscoll, Technology Transfer Manager, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, Room 3B62, 9000 Rockville Pike, Bethesda, MD 20892; Telephone: 301/496–2644; Fax: 301/402–7123; E-mail: cd68y@nih.gov.

Licensing proposals and questions about this opportunity should be addressed to: Cindy K. Fuchs, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301/496–7735 ext. 232; Fax: 301/402–0220; E-mail: Cindy__Fuchs@nih.gov.

Information on the patent applications and pertinent information not yet publicly disclosed can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA agreement.

SUPPLEMENTARY INFORMATION: This invention involves the use of modern molecular virologic techniques to introduce temperature sensitive (ts) attentuating mutations into a complementary DNA (cDNA) copy of the influenza A polymerase basic 2 (PB2) protein gene and to recover viruses bearing the mutant PB2 gene. Viral RNA (vRNA) transcribed in vitro from the PB2 DNA is transfected into avian kidney cells in the presence of an influenza A helper virus. The PB2 gene of the helper virus, which restricts its replication in mammalian cells, is substituted by the transfected mutant PB2 gene, which is known to function efficiently in mammalian cells. Using this system it has been possible to introduce three attenuating temperature sensitive mutations into the PB2 gene and to recover an infectious virus bearing this triple mutant gene. The virus bearing this mutant gene was highly attenuated in animals, was stable genetically even after prolonged replication in immunosuppressed rodents, and induced resistance to challenge with wild type influenza A virus. This gene can now be transferred from a donor virus to new epidemic or pandemic variants of influenza A virus as they appear in nature. The end result is a live attenuated reassortant influenza A virus vaccine that not only contains an attenuating PB2 gene from the attenuated donor but also the protective antigens, i.e., the hemagglutinin and neuraminidase glycoproteins, from the newly emerged wild type virus. Such a reassortant virus can serve as a protective vaccine, when administered into the respiratory tract of a vaccine, against disease caused by the epidemic influenza A viruses.

To speed the research, development, and commercialization of these agents, the NIH is seeking one or more license agreements and/or CRADAs with pharmaceutical or biotechnology companies in accordance with the regulations governing the transfer of Government-developed agents. Proposals relating to any biomedical area will be considered.

The CRADA aims will include the rapid publication of research results consistent with protection of proprietary information and patentable inventions as well as the timely exploitation of commercial opportunities. The CRADA Collaborator will enjoy the benefits of first negotiation for licensing Government rights to any inventions arising under the agreement and will advance funds payable upon signing the CRADA to help defray Government expenses for patenting such inventions and other CRADA-related costs.

The role of the National Institute of Allergy and Infectious Diseases will be as follows:

1. Provide the PB2 technology to the CRADA Collaborator.

2. Jointly develop a series of donor viruses containing the mutant PB2 gene with or without a second non-hemaglutinin (HA), non-neuraminidase (NA) attenuating gene.

3. Jointly produce a series of reassortants bearing current H1 or H3 hemagglutinins (HAs) for evaluation in clinical trials in humans.

4. Jointly produce experimental vaccines and evaluate them in clinical trials.

The role of the Collaborator(s) will be to:

1. Participate in joint activities 2–4 above.

2. Evaluate a variety of mammalian cell lines for production of live attenuated virus vaccines in lieu of production in the allantoic cavity of eggs.

Selection criteria for choosing the CRADA Collaborator(s) will include but are not limited to the following:

1. The ability to collaborate with the NIAID on further research and development of this technology. This ability can be demonstrated through experience and expertise in this and related areas of technology.

2. The demonstration of adequate resources to perform the research, development, and commercialization of this technology (e.g., personnel, expertise, and facilities) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

3. The ability to perform clinical testing or trials, and obtain IND, ELA/PLA and FDA approval for a new vaccine or other products based on this technology.

4. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this technology.

5. The level of financial support to CRADA Collaborator will provide for CRADA-related Government activities.

6. The willingness to cooperate with the NIAID in the timely publication of research results consistent with the protection of proprietary information and patentable inventions that may arise during the period of the CRADA.

7. Agreement to be bound by DHHS rules and regulations involving human subjects, patent rights, ethical treatment of animals, and randomized clinical trails.

8. The willingness to accept the language and legal provisions of the NIH model CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to any inventions developed under the CRADA. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) The grant of an irrevocable, non-exclusive, royalty-free license for research purposes to the Government when the CRADA Collaborator's employee(s) is/are the sole inventor(s), or (2) the grant of an option to negotiate an exclusive or non-exclusive license to the CRADA Collaborator when a Government employee(s) is/are the sole inventor(s).

Dated: November 30, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–30004 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of the rescheduling of the meeting of the Ad Hoc Clearinghouse Subcommittee of the National Deafness and Other Communication Disorders Advisory Council, the notice of which was published in the Federal Register 60 FR 55849 on November 3, 1995. This meeting could not be convened on November 16 due to the partial shutdown of the Federal Government. It is rescheduled for December 18 from 11:00 a.m. to 1:00 p.m., as a telephone conference call originating in room 3C05, Building 31, 9000 Rockville Pike, Bethesda, Maryland. The meeting will be open to the public, limited to space available.

Dated: December 4, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–30001 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

Consensus Development Conference on Physical Activity and Cardiovascular Health

Notice is hereby given of the NIH Consensus Development Conference on ''Physical Activity and Cardiovascular Health,'' which will be held December 18–20, 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 December 18, at 8 a.m. on December 19, and at 9 a.m. on December 20.

Over the past 25 years, the United States has experienced steady declines in the death toll from cardiovascular disease (CVD), primarily in coronary heart disease and stroke. Despite these declines, heart disease remains the number one and stroke the third leading cause of death. Lifestyle improvements by the American public and better control of the risk factors for heart disease and stroke have been a major factor in this decline.

Cardiovascular disease is of multifactorial etiology. Modifiable risk factors include high blood pressure, high blood cholesterol, obesity, smoking, diabetes, and physical inactivity. In contrast to the positive trends observed with the reduction of high blood pressure and high blood cholesterol, overweight and physical inactivity have been on the increase. In light of this, the accumulating evidence of the risk of cardiovascular disease associated with a sedentary lifestyle and the role of physical activity in the prevention and treatment of CVD and other CVD risk factors needs to be examined.

In 1991, 58 percent of adults reported that they exercised sporadically or not at all. Data from the 1990 Youth Risk Behavior Survey suggests that adolescents are less active than they were a decade ago. Only 37 percent of teenagers in grades 9 through 12 reported performing at least 20 minutes of vigorous exercise at least three or more times per week. About 50 percent of students reported they did not participate in physical education (PE) classes. Of those who reported participating in PE classes, 25 percent said they do not do any physical activity.

Physical activity not only independently protects against the development of cardiovascular disease but also has effects through the CVD risk factors of high blood pressure, high blood cholesterol, diabetes mellitus/insulin resistance, and overweight. The type, frequency, and intensity of the physical activity, however, remains controversial. Some experts suggest that moderate forms of physical activity can help prevent cardiovascular disease, while others suggest it must be vigorous and sustained.

Physical activity is also important in the treatment and management of patients with CVD or its risk factors, including patients who have stable angina, have suffered a myocardial infarction, or have heart failure. Physical activity is an important component of cardiac rehabilitation but questions remain regarding the type, frequency, and intensity needed for patients.

In addition, to potential benefits, questions remain regarding risks

associated with becoming physically active and whether environmental factors affect possible benefits.

Becoming physically active is a lifestyle behavior that is influenced by many variables such as socioeconomic status, cultural influences, age, and health status. There is a need to understand how such variables influence the adoption of this behavior by various population groups including children, adolescents, adults, the elderly, and minority populations. Various intervention strategies might be more or less useful for encouraging individuals to adopt and comply with a physically active lifestyle. Different environments such as schools, work sites, health care settings, and family structures need to be examined for their role in promoting physical activity. In addition, costs and availability of adequate resources can influence the adoption of a physically active lifestyle.

The conference will bring together specialists in cardiology, exercise physiology, cardiovascular and behavioral medicine, epidemiology, nutrition, family practice, physical therapy, and nursing as well as representatives from the public on Physical Fitness and Sports.

Advance information on the conference program and conference registration materials may be obtained from: Debra DeBose, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153, ddebose@tech-res.com.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning December 20, 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: November 29, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–30006 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Antibacterial Therapy With Bacteriophage Genotypically Modified to Delay Inactivation by the Host Defense System

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent Application 08/222,956 and corresponding foreign patent applications entitled, ''Antibacterial Therapy with Bacteriophage Genotypically Modified to Delay Inactivation by the Host Defense System'' to Exponential Therapies, Inc., New York, New York 10001. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Alternatively, the subject technology may be licensed as a CRADA invention under 15 U.S.C. 3701 *et seq.* if it is determined to have been made in whole or in part under CRADA 94/0023.

The patent application concerns bacteriophage therapy and discloses methods that enable bacteriophage to delay inactivation by any and all parts of the host defense system (HDS) against foreign objects that would tend to reduce the numbers of bacteriophage and/or the efficiency of those phage at killing the host bacteria present during an infection. The application discloses two method for producing genotypically modified bacteriophage: (1) Selection by serial passaging and (2) genetic engineering. The foregoing methods can be used to manufacture a variety of distinct therapeutics for antibiotic-resistant bacterial diseases.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Girish C. Barua, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735 ext. 263; facsimile: 301/402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the indicated exclusive field(s) of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before February 9, 1996 will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 1, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–30003 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M@

Prospective Grant of Exclusive License: Activity Dependent Neurotropic Factor

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent Applications 07/688,087, 07/871,973 and 08/324,297 and corresponding foreign patent applications entitled, ''Activity Dependent Neurotropic Factor'' to Pfizer Inc. of New York, NY. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present patent applications cover a purified non-neuronal activity-dependent neurotropic factor (ADNF) protein that increases the growth and survival of developing spinal cord neurons and prevents neuronal cell death. It may have extensive use in treating various neurological deficiencies, such as Alzheimer's disease, Huntington's disease, diabetic neuropathy, spinal cord injury, HIV encephalopathy and stroke.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Girish C. Barua, Ph.D.,

Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7735 ext. 263; facsimile: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses.

Only written comments and/or applications for a license which are received by NIH on or before February 9, 1996 will be considered. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 28, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–30005 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) (NIH) 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 50634, September 29, 1995), is amended to reflect a technical correction in the title and functional statement of the organization currently identified as the Office of Contracts and Grants Management, Office of Administration, Office of the Director, NIH (OCGM/OA/OD/NIH) (HNAB2). The correct title of this organization is the Office of Contracts Management.

Section HN–B, Organization and Functions, is amended as follows:

Under the heading Office of the Director (HNA), Office of Administration (HNAB), Office of Contracts and Grants Management (HNAB2), delete the title and functional statement in their entirety and substitute the following:

Office of Contracts Management (HNAB2)

(1) Advises the NIH Director and staff and provides leadership and direction for the NIH acquisition activities; (2) plans, develops and implements NIH-wide contracting policies and procedures and participates with other offices in the Office of the Director, NIH, and with the NIH awarding components in the coordination and implementation of Federal and Departmental acquisition policies and procedures; (3) plans, negotiates, awards, administers, and closes research and development and related contracts for those NIH Institutes, Centers, and Divisions (ICDs) electing to employ this centralized service and advises the Directors of those ICDs on research and development contracting issues; (4) maintains continuing reviews and evaluations of NIH contracting and purchasing operations to ensure adherence to the Federal Acquisition Regulation and all supplemental departmental and NIH policies and standards; (5) provides NIH grants and contracts operating offices with cost/price analysis services and technical advice on the adequacy of accounting systems and financial responsibility of prospective contractors and grantees; negotiates indirect cost rates with commercial organizations awarded contracts or grants; maintains liaison with the Office of the Inspector General, Office of Audit Services, and resolves findings in external audit reports; (6) plans, develops, and directs an NIH-wide Small Business Program in order to maximize contract and purchasing opportunities for small, disadvantaged, and women-owned businesses, and to monitor for compliance with applicable statutes and regulations; (7) analyzes and coordinates requirements for contract information relevant to the NIH IMPAC and higher-level contract data systems for the NIH; (8) analyzes, develops, and coordinates with appropriate departmental and NIH officials on initiatives pertaining to contract automated data and documentation systems, procurement planning and control, contract forms management and contract closure; and (9) manages the NIH acquisition training and certification activities under the Department's Acquisition Training and Certification Program; sponsors other professional acquisition training to attract, develop, and retain high quality personnel; and determines course equivalencies and grants waivers as necessary for employees who serve as project officers on contracts.

Dated: November 30, 1995.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 95–30002 Filed 12–8–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; F–14954–A2, F–19148–37]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Olgoonik Corporation for 13,497 acres. The lands involved are in the vicinity of Wainwright, Alaska, within Tps. 14 and 16 N., Rs. 30 W., Umiat Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Arctic Sounder. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 10, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 95–30060 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–JA–P

[OR–110–1220; G5–205]

Notice Rescinding Emergency Closure and Restriction on Public Lands Near West Fork of Williams Creek

AGENCY: Bureau of Land Management, Medford District, Grants Pass Resource Area, Interior.

ACTION: Public notice.

SUMMARY: The notice published on page 45489 in the issue of Thursday, August 31, 1995, closing entry to and prohibiting physical presence upon all lands, roads and trails near West Fork

of Williams Creek in Josephine County, Oregon is hereby rescinded.

Dated: December 1, 1995.

Wayne M. Kuhn,

Associate District Manager.

[FR Doc. 95–29999 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–33–M

[AZ–933–05–1430–01; 5410–00–A113; AZA 4558, AZA 29367]

Notice of Realty Action; Termination of R&PP Classification; Correction Concerning Concession Lease; Application for Conveyance of Federally-Owned Mineral Interests (CMI)

AGENCY: Bureau of Land Management, Interior.

ACTION: (1) Termination/R&PP Classification; (2) Correction/ Concession Lease; (3) Segregation for CMI.

SUMMARY: (1) *AZA 4458.* The following described 80 acres were classified on June 17, 1971, for a private exchange.

Gila and Salt River Meridian, Arizona

T. 4 S., R. 14 E.,
Sec. 8, NE¼SW¼, SW¼SW¼.

Since these lands were not conveyed in the exchange, the classification is terminated effective the date of this notice.

(2) In notice document 95–20925 beginning on page 43811 in the issue of Wednesday, August 23, 1995, make the following correction: On page 43812 in the first column, please delete the following: ''Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under mineral leasing laws.'' This sentence does not apply to leasing land under regulations found at 43 CFR part 2920. All other details of the notice remain as originally published.

(3) *AZA 29367.* Pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719), the Dunne Family Trust, Alexander Dunne, and Thomas Griffin Dunne have applied to purchase the mineral estate in the following lands:

Gila and Salt River Meridian, Arizona

T. 23 S., R. 14 E.,
Sec. 34, NW¼.

The area described contains 160 acres.

Upon publication of this notice, the mineral interests described above will be segregated from the mining and the mineral leasing laws. The segregation shall terminate upon issuance of a patent, upon final rejection of the application, or 2 years from the publication date, whichever occurs first.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Evelyn Stob, Land Law Examiner, Arizona State Office (AZ933), 3707 North 7th Street, Phoenix, Arizona 85014, Phone: (602) 650–0518.

Dated: December 4, 1995.

Mary Jo Yoas,

Chief, Branch of Lands and Minerals Operations Section.

[FR Doc. 95–30008 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–32–M

[WY–923–5440–00–K017; WYW 133127]

Realty Action; Conveyance of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; airport conveyance to the City of Kemmerer.

SUMMARY: The following public lands in Lincoln County have been found suitable for conveyance to the City of Kemmerer for airport purposes under the Act of May 24, 1928, as amended and Section 516 of the Airport and Airway Improvement Act of 1982.

Sixth Principal Meridian

T. 21 N., R. 116 W.,
Sec. 2, lots 8 and 9;
Sec. 3, lot 5;
Sec. 11, lot 16;
Tract 68, lot 15.
T. 22 N., R. 116 W.,
Sec. 34, lot 4;
Sec. 35, lot 7.

The above land contains 194.08 acres.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

SUPPLEMENTARY INFORMATION: Conveyance of the lands is consistent with applicable Federal and county land use plans and will help meet the needs of Lincoln County Residents Under this conveyance Runway 16–34 at the Kemmerer Municipal Airport will be extended for safety purposes.

The conveyance will contain reservations to the United States for ditches, canals and all minerals. Additionally the conveyance will be subject to rights of record including a right-of-way, WYW 50098, to U.S. West Communications for a telephone line; a right-of-way, WYW 105806, to Utah Power and Light for a powerline; and a Federal-aid highway right-of-way, WYE 025956, to the Federal Highway Administration. The patent will be subject to the continued grazing of Ken Hankin under grazing permit GR–494055, until September 30, 1996, and Robert Peternal under grazing permit GR–494122, until October 3, 1996. Specific covenants required by the Federal Aviation Administration will also be included in the conveyance and are available by contacting the office listed below.

The conveyance is consistent with the Kemmerer Resource Management Plan. The land is not required for any other Federal purpose.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except applications for airport purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Bureau of Land Management, Branch of Minerals & Lands Authorizations, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objection, this proposed realty action will become final.

Dated: December 4, 1995.

Melvin Schlagel,

Realty Specialist.

[FR Doc. 95–30009 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. The original notice was published on November 2, 1995, in FR Vol. 60, No. 212, 55727, pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). The comment period has been extended for an additional 5 days because of the public interest.

Applicant: Robert Dunn, Sylmar, CA, PRT–807838.

The applicant requests a permit to purchase in interstate commerce one captive-born female orangutan (*Pongo pygmaeus*) from Last Chance Farm of Florida for the purpose of enhancement of the survival of the species through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 5 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281).

Dated: December 5, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–30023 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.):*

Applicant: Richard Olsen, Santa Cruz, CA, PRT–809107.

The applicant requests a permit for the import of one male and three female Chinese Monals (*Lophophorus lhuysis*) bred in captivity at the Forestry Department of Sichuan Province aviary, Baoxing, China, for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281).

Dated: December 1, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits Office of Management Authority.

[FR Doc. 95–30024 Filed 12–08–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Operations of ARCO Western Energy, Kern County, California

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that ARCO Western Energy has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–809228. The proposed permit would authorize the incidental take of the endangered San Joaquin kit fox (*Vulpes macrotis mutica*), blunt-nosed leopard lizard (*Gambelia silus*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), giant kangaroo rat (*Dipodomys ingens*), San Joaquin woolly threads (*Lembertia congdonii*), Kern mallow (*Eremalche kernensis*) and the threatened Hoover's eriastrum (*Eriastrum hooveri*) and/or their habitat during the implementation of oil exploration activities. The permit will become effective for the following currently unlisted, covered species if they are listed under the Act: San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), southwestern pond turtle (*Clemmys marmorata pallida*), short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*), San Joaquin LeConte's thrasher (*Toxostoma lecontei macmillanorum*), western burrowing owl (*Athene cunicularia hypugea*), slough thistle (*Cirsium crassicaule*) and the recurved larkspur (*Delphinium recurvatum*).

The Service also announces the availability of an environmental assessment (EA) for the incidental take permit application, which includes the proposed habitat conservation plan (HCP) fully describing the proposed project and mitigation, and the accompanying implementing agreement (IA). This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, EA and IA should be received on or before (January 10, 1996).

ADDRESSES: Comments regarding the application or adequacy of the EA and IA should be addressed to Mr. Joel Medlin, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825. Please refer to permit number PRT–809228 when submitting comments. Individuals wishing copies of the application, EA or IA for review should immediately contact the above office (916–979–2725).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Horton or Ms. Jody Brown, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916–979–2725).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Sacramento Field Office at the above referenced address, or by telephone at (916) 979–2725. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act, and implementing regulations, prohibit the ''taking'' of a species listed as threatened or endangered. However, the Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are promulgated at 50 CFR 17.22 and 17.32, respectively.

ARCO Western Energy proposes to conduct on-going oil production, operations and transportation activities on approximately 330 acres in Kern County, California. The age of the field makes routine maintenance, repair and sometimes replacement of active equipment necessary. In addition, ARCO Western Energy seeks coverage for operations and maintenance activities for pipeline, powerline, and emergency response activities outside of the Coles Levee oil field. Though the proposed project would remove 330 acres of suitable habitat for the San Joaquin kit fox, blunt-nosed leopard lizard, Tipton kangaroo rat, giant

kangaroo rat, Kern mallow and Hoover's eriastrum, the HCP involves implementation of measures to minimize effects to the environment by utilizing previously disturbed lands for construction related activities to the greatest extent practicable, and designating Habitat Management Lands to compensate for the loss of natural lands. Compensation ratios for permanently disturbed habitat areas will be 3:1 (3 acres will be preserved for every 1 acre permanently disturbed); for areas considered to be temporarily disturbed, a ratio of 1.1:1 will be used (1.1 acres will be preserved for every 1 acre temporarily disturbed). In addition, direct harassment of any covered species will be avoided to the greatest extent practicable.

The EA considers the environmental consequences of four alternatives. The no project alternative would result in no immediate environmental impacts. However, state and Federal agencies regulating oil and gas activities would still require a variety of abandonment activities to occur over time; these activities may result in take of listed species. Thus, this alternative may place ARCO in violation of state and/or Federal regulations while denying ARCO Western Energy the opportunity to develop, recover and maintain potential oil resources. For these reasons, this alternative was rejected. Alternative 1, the proposed action, was selected because: (1) It best satisfies the needs and purpose of the proposed project; (2) it is likely to result in a relatively low level of incidental take; (3) impacts are mitigated through the establishment of the Coles Levee Ecosystem Preserve and the use of take reduction methods; (4) funding is available for the project as designed; and (5) high quality compensation habitat is present on the Coles Levee Ecosystem Preserve. It is anticipated that up to 330 acres of endangered species habitat may be impacted by implementation of this alternative. Alternative 2 involves the full development of the Coles Levee area for oil production. It is anticipated that up to 3,000 acres of endangered species habitat may be impacted by implementation of this alternative. This alternative was rejected because: (1) The level of incidental take would likely be greater than under the preferred alternative; (2) the additional level of mitigation funding is not economically feasible; (3) this intensity of development is not appropriate at this site based on oil reserves and extraction techniques. Alternative 3 involves the development of oil production facilities on an alternative site. This alternative is severely constrained by the lack of facilities on-site, the costs of constructing alternative facilities, land purchase, and the likelihood of any other areas suitable for oil production in this portion of California having similar endangered species concerns. It is anticipated that up to 10,000 acres of endangered species habitat may be impacted by implementation of this alternative. For these reasons this alternative was rejected.

The Service considers implementation of the proposed HCP in connection with a section 10(a)(1)(B) permit, to be an effective means to reconcile oil drilling activities with the section 9 listed species take prohibition and other conservation mandates under the Act.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act of 1969 (NEPA) regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final NEPA and permit determination will be made no sooner than 30 days from the date of this notice.

Dated: December 5, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–30058 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area (GGNRA) and Point Reyes National Seashore Advisory Commission will be held at 7:30 p.m. (PST) on Wednesday, January 24, 1996 at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, California to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. This meeting was previously scheduled for Wednesday, November 15, 1995, but due to the federal shutdown affecting national parks that week, the meeting was rescheduled.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Naomi T. Gray
Dr. Howard Cogswell
Mr. Michael Alexander
Mr. Jerry Friedman
Ms. Lennie Roberts
Ms. Yvonne Lee
Ms. Sonia Bolaos
Mr. Trent Orr
Mr. Redmond Kernan
Ms. Jacqueline Young
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

The main agenda item at this meeting will be a presentation of a GGNRA Staff Report on the Golden Gate Bridge Seismic Upgrade Project. A public hearing on this project was held on Wednesday, December 13, 1995 at the Board of Supervisors and Planning Chambers, Marin County Civic Center, San Rafael, California. An overview of the Golden Gate Bridge District Seismic Retrofit Project was presented to this Advisory Commission on August 16, 1995 by Merv Giacomini, District Engineer, Golden Gate Bridge, Highway, and Transportation District. The major impacts to the park are anticipated to be on lands directly under the bridge, at Fort Point National Monument (requiring the Fort to close for several days a week during the one-year construction period), the Fort Scott area of the Presidio (which will be a staging area for construction work), and the north end of the bridge. Following approval of the Staff Report and approval of a Negative Declaration by the Golden Gate Bridge, Highway, and Transportation District board, and a Finding of No Significant Impact by the Federal Highway Administration and the National Park Service, a permit for construction activities on GGNRA land will be issued by the National Park Service incorporating agreed upon mitigation.

Also on the agenda at this meeting will be briefings on the status of a park

entrance at East Fort Miley, on the Historical Compliance Process on the Presidio and GGNRA, and an update on the Bolinas Lagoon Management Plan.

This meeting will also contain a GGNRA Superintendent's Report and a Presidio General Manager's Report.

A specific final agenda for this meeting will be made available to the public at least 15 days prior to this meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 556–4484.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after the meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 1, 1995.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 95–29946 Filed 12–8–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[No. MC–F–20757]

ANR Advance Holdings, Inc.—Merger and Control Exemption—ANR Freight System, Inc., Transport USA, Inc., and Advance Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice that the Commission has been requested to issue a finding that the cash price of $10 per share payable to the minority stockholders of Advance Transportation Company in connection with the recent merger of that corporation into ANR Freight System, Inc., is just and reasonable.

SUMMARY: On November 3, 1995, Advance Transportation Company was merged into ANR Freight System, Inc., which has been renamed ANR Advance Transportation Company, Inc. The terms and conditions of the merger included, among other things, a ''cashing out'' of all minority stockholders of Advance Transportation Company at a price of $10 per share. The Commission has been requested to issue a finding that the cash price of $10 per share payable to the minority stockholders of Advance Transportation Company in connection with the merger is just and reasonable.

DATES: Comments must be filed by January 10, 1996. Replies must be filed by January 25, 1996.

ADDRESSES: All pleadings should refer to No. MC–F–20757. Comments (an original and 10 copies) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423.[1] Comments should also be served (one copy each) on: (1) Warren Belmar, Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, N.W., Washington, D.C. 20004; and (2) James F. Moriarty, Fleischman & Walsh, P.C., Suite 600, 1400 16th Street, N.W., Washington, D.C. 20036. Replies (an original and 10 copies) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Replies should also be served (one copy each) on: any persons filing comments; each of the approximately 675 participants in the employee stock ownership plan that formerly held stock in Advance Transportation Company; and each of the 39 former employees that held stock in Advance Transportation Company immediately prior to the recent merger.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The merger consummated November 3, 1995, was incidental to a control transaction that involved three motor carriers: ANR Freight System, Inc. (ANR Freight); Transport USA, Inc. (Transport); and Advance Transportation Company (ATC).[2]

Immediately prior to the merger and the control transaction, (1) ANR Freight and Transport were wholly owned direct subsidiaries of ANR Advance Holdings, Inc. (AA Holdings), which was itself a wholly owned direct subsidiary of ANRFS Holdings, Inc. (ANRFS), which was in its turn a wholly owned indirect subsidiary of The Coastal Corporation, and (2) ATC's stock was held by ''principal stockholders'' and by ''minority stockholders.'' The ATC principal stockholders were eight individual family members, who collectively owned 78.4% of ATC's stock. The ATC minority stockholders included both an employee stock ownership plan (an ESOP), under which approximately 675 ATC employees were the beneficial owners of the stock held by the ESOP, and 39 former ATC employees, each of whom owned outright ATC stock that had formerly been held by the ESOP. The ESOP held 21.6% of ATC's stock; the 39 former employees held an additional 415 shares of ATC's stock.[3]

The control transaction of which the merger was a part involved the common control of ANR Freight, Transport, and ATC. Common control of these three motor carriers was obtained by AA Holdings, which already controlled ANR Freight and Transport, and which received, as part of the control transaction, the 78.4% stock ownership of ATC that had previously been held by the eight principal stockholders of ATC.

In connection with and incidental to the control transaction, (1) ATC was merged into ANR Freight, and ANR Freight was renamed (its new acronym is AATC), and (2) the principal stockholders of ATC acquired 50% of the stock of AA Holdings (prior to the transaction, ANRFS had held 100% of the stock of AA Holdings). In connection with and incidental to the merger of ATC into ANR Freight, ATC's minority stockholders (the ESOP and the former employees) were ''cashed out'' at a price of $10 per each share of ATC stock formerly held by such minority stockholders.

The merger and the broader control transaction were subject to our jurisdiction under 49 U.S.C. 11343(a). Accordingly, by notice of exemption filed August 23, 1995, five parties (ANR Freight, Transport, AA Holdings, ANRFS, and ATC) invoked the 49 U.S.C. 11343(e) class exemption codified at 49 CFR Part 1186. The notice was published in the *ICC Register* on September 1, 1995 (at pages 15–16), and it indicated that we had exempted, subject to public comment, both the merger of ATC into ANR Freight and the

[1] Legislation to terminate the Commission on December 31, 1995, is now pending enactment. Until further notice, parties submitting pleadings should continue to use the current name and address.

[2] ATC was also licensed as a broker, but its broker status is of no particular consequence in the present context.

[3] The cited figures (the 78.4% holdings of the principal stockholders; the 21.6% holdings of the ESOP, on behalf of approximately 675 ATC employees; and the 415 shares held by the 39 former ATC employees) have varied somewhat through the course of this proceeding. We have therefore used the figures provided in the most recent pleading (the petition filed November 14, 1995), which we understand to represent the exact figures as they stood immediately prior to the merger of ATC into ANR Freight. We realize, of course, that the described ATC holdings add up to 415 shares above 100%. The context, however, suggests that either the 78.4% figure or the 21.6% figure has been rounded off, because the 415 shares held outright by former employees amount to approximately 0.07% of ATC's stock.

control by AA Holdings of AATC (the renamed survivor of that merger) and Transport.[4] Comments were due 30 days after publication of the notice, but none was filed. Accordingly, the exemption became effective on October 31, 1995. *See* 49 CFR 1186.7. The merger and the control transaction of which it was a part were thereafter consummated on November 3, 1995.

By petition filed November 14, 1995, AA Holdings and AATC (petitioners) request a determination verifying that the cash price of $10 per share payable to ATC's minority stockholders in liquidation of their ATC stock is just and reasonable.[5] Petitioners seek this determination (1) because they believe that we are required by *Schwabacher* v. *United States,* 334 U.S. 182 (1948), to make such a determination to protect minority stockholders, and (2) in order to immunize the ANR Freight/ATC merger from the otherwise applicable state law rights, particularly the otherwise applicable state law dissenters' rights, of the minority stockholders. *See* 49 U.S.C. 11341(a) (''A carrier, corporation, or person participating in [a transaction exempted under Title 49, Subtitle IV, Chapter 113, Subchapter III] is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction,'' etc.). Petitioners urge expedited handling of their petition.

Our statutory mandate, 49 U.S.C. 11344(c), requires, among other things, that we determine, in appropriate cases, that the terms and conditions of certain transactions affecting stockholders are just and reasonable. *See, e.g., Union Pacific Corp. et al.—Cont.—MO–KS–TX Co. et al.,* 4 I.C.C.2d 409, 515 (1988) (''In appraising this transaction affecting the rights of stockholders, it is incumbent upon us to see that the interests of minority stockholders are protected and that the overall proposal is just and reasonable to those stockholders. *Schwabacher* v. *United States,* 344 U.S. 182, 198, 201 (1948).''). To move this matter to a speedy resolution, we will proceed in an expedited fashion.

Because one or more of the eight principal ATC stockholders, although not ''minority stockholders'' in petitioners' usage of this term, could be ''minority stockholders'' in the *Schwabacher* sense,[6] our ''just and reasonable'' jurisdiction conceivably encompasses matters broader than the precise determination sought by petitioners. Petitioners, however, have the right to seek the narrow determination they have requested, and we will therefore limit our inquiry to the precise matter that petitioners have placed before us: Whether the cash price of $10 per share payable to ATC's minority stockholders in liquidation of their ATC stock is just and reasonable; and we will adhere to petitioners' usage of the term ''minority stockholders'' to embrace only the ESOP (under which approximately 675 ATC employees were the beneficial stockholders) and the 39 former ATC employees that held ATC stock outside the ESOP.

Accordingly, we solicit comments from all interested persons respecting whether the cash price of $10 per share payable to the minority stockholders of ATC is just and reasonable. Such comments must be submitted by January 10, 1996. Petitioners may file replies to such comments by January 25, 1996.

Petitioners have indicated that they will serve a copy of their petition (only the petition; not the appendix document) on each ESOP participant and on each of the 39 former employee stockholders. Petitioners have further indicated that they will serve a copy of the appendix document on any person requesting a copy. We expect that petitioners, if they have not completed such service of the petition prior to the date of publication of this notice, will complete such service no later than December 18, 1995.

Petitioners have noted that, as a matter of law, Federal Register publication is considered to provide notice to all interested persons. Due process considerations, however, suggest that, whenever possible, identifiable interested persons should receive actual notice rather than constructive notice. We will therefore require petitioners to serve a copy of this notice on each of the approximately 675 ESOP participants and on each of the 39 former employee stockholders. Such service should be accomplished by first class mail, postage prepaid, and all such notices should be mailed no later than December 18, 1995.

Petitioners should certify in writing, no later than December 21, 1995, that they have served copies of their petition and this notice in the manner indicated in the two preceding paragraphs.

Any interested person may request copies of the petition and/or the appendix document, in writing or by telephone, from Warren Belmar, Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, N.W., Washington, D.C. 20004 (telephone: 202–662–0200) or James F. Moriarty, Fleischman & Walsh, P.C., Suite 600, 1400 16th Street, N.W., Washington, D.C. 20036 (telephone: 202–939–7900).

In addition to submitting an original and 10 copies of all comments and replies filed with the Commission, commenters and petitioners are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 5.1 (or formatted so that it can be converted by WordPerfect 5.1). Petitioners are also encouraged to submit on such a diskette the petition and the appendix document (or so much thereof as can conveniently be submitted on such a diskette).

Decided: December 1, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30082 Filed 12–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–448 (Sub-No. 1X)]

SF & L Railway Inc.—Abandonment Exemption—in Ellis and Hill Counties, TX

SF & L Railway, Inc. (SF&L), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 18.23 miles of railroad between milepost 813.1, near Italy, and milepost 831.33, near Hillsboro, in Ellis and Hill Counties, TX.

SF&L has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic that must be rerouted; (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

[4] By separate decision served September 1, 1995, AA Holdings was authorized to assume temporary control of ANR Freight, Transport, and ATC pending final disposition of the exemption proceeding.

[5] The petition itself references, and is accompanied by, a substantial document entitled ''Petitioners' Appendices,'' which we shall refer to as the appendix document.

[6] The eight principal stockholders owned, collectively, 78.4% of ATC's stock; what any one of the eight owned has not been indicated. Petitioners have indicated, however, that a 66⅔ vote was necessary for approval of the merger. A single principal stockholder acting alone could block the merger only if that stockholder held approximately 11.74% of ATC's stock (and any single principal stockholder might have been unable to block the merger even with 11.74% of ATC's stock; the 11.74% calculation assumes that no stock held by the ESOP and the former employees was voted in favor of the merger). It is immediately apparent that at least two of the principal stockholders each must have owned less than 11.74% of ATC's stock, because the eight principal stockholders together held only 78.4% of such stock.

Commission or with any U.S. District Court or has been decided in favor of a complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), 49 CFR 1105.7 (environmental reports), and 49 CFR 1152.50(d)(1) (notice to 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 January 10, 1996, 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 December 21, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 2, 1996, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission,[4] 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Jo A. DeRoche, 1350 New York Ave., N.W., Suite 800, Washington, DC 20005–4797.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

SF&L has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 15, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., 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 is 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: December 4, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30059 Filed 12–8–95; 8:45 am]

BILLING CODE 7035–01–P

[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 involving 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 prior to 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.

[4] Legislation that will terminate the Commission on December 31, 1995, is now pending enactment. Parties submitting pleadings should continue to use the Commission's current name and address until further notice.

[Finance Docket No. 32256]

Consolidated Rail Corporation—Control and Operation Exemption—Clearfield and Mahoning Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the control and operation by Consolidated Rail Corporation of Clearfield and Mahoning Railway Company, subject to standard labor protective conditions.

DATES: This exemption will be effective on January 7, 1996. Petitions to stay must be filed by December 18, 1995, and petitions to reopen must be filed by December 28, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32256 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioner's representative, John J. Paylor, 2001 Market St.–16A, P.O. Box 41416, Philadelphia, PA 19101.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Dated: November 22, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30079 Filed 12–8–95; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *General Motors Corporation,* Civil Action No. 1:95–CV–02215, was lodged on November 30, 1995, with the United States District Court for the District of Columbia. The proposed Consent Decree resolves claims against General Motors Corporation for injunctive relief and civil penalties under the Clean Air Act, 42 U.S.C. 7401 *et seq.* (the ''Act''), arising from the sale of approximately 470,000 model year 1991–1995 Cadillac vehicles, certain model year 1991–1995 light duty vehicles, and certain model year 1989–1996 heavy-duty gasoline engines (collectively, the ''covered vehicles and engines'') in violation of the Act and the regulations promulgated thereunder relating to the emission of pollutants from mobile sources.

The proposed Consent Decree requires that General Motors Corporation: Implement a remedial recall campaign to reduce emissions associated with the climate-control system fuel-enrichment strategy employed on the Cadillacs that are the subject of the government's claims; establish a fund of up to $8.75 million to implement one or more emission remedial projects and an emission test program to remedy the past and future emission of air pollutants from the covered vehicles and engines; conduct tests of future model years of the covered vehicles and engines to assess the affects of accessory- and timer-based enrichment strategies; and pay a civil penalty of $11 million to resolve the United States' civil claims with respect to the vehicles and engines covered by the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication,

comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Motors Corporation*, DOJ Ref. #90–5–2–1–2011 and 2011A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Judiciary Center Bldg., 555 Fourth St. NW., Washington, DC 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M Street SW., Washington, DC 20460; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $18.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 95–30055 Filed 12–8–95; 8:45 am]

BILLING CODE 4410–01–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

National Consultation on Drug Control

AGENCY: Office of National Drug Control Policy.

ACTION: The Office of National Drug Control Policy (ONDCP) is requesting an emergency review under the Paperwork Reduction Act. This is because ONDCP is required by law to deliver the 1996 National Drug Control Strategy and Budget document to the Congress in February, 1996, and the subject consultation is critical to the development of that Strategy.

SUMMARY: The Office of National Drug Control Policy, Executive Office of the President, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR 1320 {53 FR 16618, May 10, 1988}), is submitting a request to conduct a National Consultation on Drug Control, entitled ''Consult With America.'' The ONDCP consultation survey instrument will be used to assess public opinion regarding perceptions of the use and impact of illicit drugs; the effectiveness of prevention, intervention and treatment programs; and level of public support for specific drug control actions. A telephone survey of a random sample of adults 18 years of age and older will be conducted.

DATES: ONDCP has requested an emergency review of this submission under the Paperwork Reduction Act; this Office of Management and Budget (OMB) review has been requested to be completed by December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the National Survey on Drug Control should be directed to Mr. N. Ross Deck, Senior Policy Analyst, Office of National Drug Control Policy, Executive Office of the President, 750 17th Street NW., Washington, DC 20500, (202) 395–6736. Any member of the public who wants to comment on the information collection request which has been submitted to OMB should advise Mr. Deck of this intent at the earliest possible date.

Average Burden Hours/Minutes per Response: 12 Minutes.

Frequency of Response: One time data collection.

Number of Respondents: 2,000.

Total Annual Burden Hours: 400.

Total Annual Response: 2,000.

Affected Public: Non-institutional adult (18 years of age or older) population residing in the U.S. at the household level.

Respondents Obligation to Replay: The survey is voluntary.

SUPPLEMENTARY INFORMATION: None.

Signed at Washington, DC, this 1st day of December, 1995.

N. Ross Deck,

Senior Policy Analyst.

[FR Doc. 95–30030 Filed 12–8–95; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company (Perry Nuclear Power Plant, Unit 1); Exemption

I

Cleveland Electric Illuminating Company, (the licensee) is the holder of Facility Operating License No. NPF–58, which authorizes operation of the Perry Nuclear Power Plant, Unit 1 (PNPP). The operating license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility consists of a single boiling water reactor located at the licensee's site in Lake County, Ohio.

II

Containment leak rate testing is necessary to demonstrate that the measured leak rate is within the acceptance criteria cited in the licensing design basis. Periodic testing of the overall containment structure along with separate leak testing of the penetrations provides assurance that post-accident radiological consequences will be within the limits of 10 CFR Part 100. The Commission's requirements regarding leak rate testing are found in Appendix J to 10 CFR Part 50.

In its letter dated October 21, 1994, the licensee applied for partial exemptions from the Commission's regulations. The subject exemptions, which are from the requirements in Appendix J, Option A, to 10 CFR Part 50, include:

- Section III.A.5(b)(2) states that the measured leakage from the containment integrated leak rate (Type A) test (Lam) shall be less than 75% of the maximum allowable leakage rate (0.75 La).
- Sections III.B.3 and III.C.3 require that the combined leakage of valves and penetrations subject to Type B and C local leak rate testing be less than 0.6 times the maximum allowable leakage rate (0.6 La).
- Section III.A.1(d) requires that all fluid systems that would be open to containment following post-accident conditions, be vented and drained prior to conducting the containment integrated leak rate test.
- Section III.D.1(a) states that the third Type A test of each 10-year interval be conducted when the plant is shut down for the 10-year plant inservice inspection.
- Section III.D.3 states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are tests intended to measure containment isolation valve leakage rates.

III

Section III.A.5(b)(2) states that the measured leakage from the containment integrated leak rate (Type A) test (L_{am}) shall be less than 75% of the maximum allowable leakage rate (0.75 L_a). The licensee proposes to exempt main steam line isolation valve leakage from Type A test results and consider leakage from the main steam lines separately. Sections III.B.3 and III.C.3 require that the combined leakage of valves and penetrations subject to Type B and C local leak rate testing be less than 0.6

times the maximum allowable leakage rate (0.6 L_a). The licensee proposes to exempt main steam line isolation valve leakage from the combined leakage from Type B and C local leak rate testing and consider leakage from the main steam lines separately. Section III.A.1(d) requires that all fluid systems that would be open to containment following post-accident conditions, be vented and drained prior to conducting Type A tests. The licensee proposes that the piping between the inboard and outboard main steam line isolation valves be flooded with water when Type A tests are conducted.

During the original staff review of the PNPP, the licensee proposed separate treatment of measured leakage past the main steam isolation valves. This approach is consistent with the staff's Standard Review Plan (SRP) 15.6.5, Appendix D, ''Radiological Consequences of a Design Basis Loss-of-Coolant Accident: Leakage from Main Steam Isolation Valve Leakage Control System.'' In this SRP, the radiological consequences associated with leakage from the main steam lines is calculated separately and subsequently combined with the consequences from other fission product release paths.

As described in the Final Safety Analysis Report, the licensee calculates off-site dose consequences by assuming separate contributions from the containment integrated leak rate and the main steam line isolation valve leak rate. These assumptions are supported by the staff's Safety Evaluation Report (NUREG–0887) and the PNPP Technical Specifications. Both the FSAR and Specification 3.6.1.2.a state that the overall containment integrated leak rate shall be less than 0.20 percent per day. NUREG–0887 lists this same value for the containment integrated leak rate and a separate contribution from main steam line leakage. Finally, Specification 3.6.1.2.b specifically states that main steam line leakage will not be considered part of the combined leak rate for penetrations and valves. Specification 3.6.1.2.c limits the maximum allowable leakage from each main steam line to 25 standard cubic feet per hour.

As described above, the licensee does not include leakage from the main steam line isolation valves in either the Type A test results or the combined Type B and C test results. Since the licensee measures main steam line leakage separately from other Appendix J related testing, the licensee does not want leakage from the main steam lines to inadvertently influence the Type A test results. Therefore, in lieu of venting and draining the piping between containment isolation valves as required by Appendix J, the licensee proposes filling this section of piping with water when Type A tests are performed. Filling these sections of pipe with water would ensure that air would not pass through these lines and thereby contribute to the Type A test results.

The licensee has proposed alternative methods to the leak testing requirements of Appendix J. While the licensee is treating main steam line leakage separately from both Type A test results and the combined Type B and C test results, the licensee still meets the intent of Appendix J by demonstrating that the overall leakage is within design limits. Therefore, the staff concludes that special circumstances are present as required by 10 CFR 50.12(a)(2)(ii), in that application of the regulation is not needed to meet the underlying purpose of the rule. Furthermore, the staff finds that permitting the alternative methods of leak testing will not present an undue risk to the public health and safety.

Section III.D.1(a) requires, in part, that ''* * * a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspections.'' The licensee proposes to perform the three Type A tests at approximately equal intervals within each 10-year period, with the third test of each set conducted as close as practical to the end of the 10-year period. However, there would be no required connection between the Appendix J 10-year interval and the inservice inspection 10-year interval.

The 10-year plant inservice inspection (ISI) is the series of inspections performed every 10-years in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The licensee performs the ISI volumetric, surface, and visual examinations of components and system pressure tests in accordance with 10 CFR 50.55a(g)(4) throughout the 10-year inspection interval. The major portion of this effort is presently being performed during the refueling outages. As a result, there is no extended outage in which the 10-year ISI examinations are performed.

There is no benefit to be gained by the coupling requirement cited above in that elements of the PNPP ISI program are conducted throughout each 10-year cycle rather than during a refueling outage at the end of the 10-year cycle. Consequently, the subject coupling requirement offers no benefit either to safety or to the economical operation of the facility.

Moreover, each of these two surveillance tests (i.e., the Type A tests and the 10-year ISI program) is independent of the other and provides assurances of different plant characteristics. The Type A test assures the required leak-tightness to demonstrate compliance with the guidelines of 10 CFR Part 100. The 10-year ISI program provides assurance of the integrity of the structures, systems and components as well as verifying operational readiness of pumps and valves in compliance with 10 CFR 50.55a. There is no safety-related concern necessitating their coupling in the same refueling outage. Accordingly, the staff finds that application of the regulation is not necessary to achieve the underlying purpose of the rule.

On this basis, the staff finds that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2)(ii). Further, the staff also finds that the uncoupling of the Type A tests from the 10-year ISI program will not present an undue risk to the public health and safety.

Section III.D.3 of Appendix J states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The licensee requested relief from the requirement to perform Type C tests during each reactor shutdown for refueling. The licensee proposes to perform the required Type C tests while the plant is at power.

Section II.D.3 of Appendix J requires that ''Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years.'' Paragraph III.D.2 discusses the scheduling of Type B tests and contains the same wording but also includes an additional provision that allows Type B tests to be performed at ''other convenient intervals'' in lieu of during reactor shutdown for refueling. The licensee has requested that this same flexibility be applied to Type C local leak rate testing.

The underlying purpose of the rule is to ensure that adequate testing is done to demonstrate containment integrity. From the standpoint of testing adequacy, when the testing is performed is not significant because the conditions of testing are the same regardless of when it is performed. As indicated by the licensee, the BWR/6 Mark III containment/suppression pool design is such that Type C local leak rate testing can be performed during power operation on certain systems. In addition, the Drywell and Containment Purge System containment isolation

valves have surveillance requirements imposed on them to demonstrate leak tightness during power operation. These surveillance tests are the same exact leak rate tests as the Type C local leak rate tests performed during refueling outages.

Taking credit for testing performed during power operation provides the same degree of assurance of containment integrity as taking credit for testing performed during shutdown. In addition, testing while at power may be preferable when considering ALARA and operability requirements. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV

The Commission has determined that pursuant to 10 CFR 50.12(a)(1) that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will not have a significant impact on the quality of the human environment (60 FR 51821). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of December 1995.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects III/IV,Office of Nuclear Reactor Regulation

[FR Doc. 95–30048 Filed 12–8–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–440]

Cleveland Electric Illuminating and Ohio Edison Company, et al.; Notice of Transfer of Ownership of Perry Nuclear Power Plant

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under Title 10 of the *Code of Federal Regulations* (CFR), Section 50.80, of the transfer of 17.42% (except for related transmission facilities) of the ownership of the facilities for the Perry Nuclear Power Plant, Unit No. 1 (PNPP Unit 1) from the Ohio Edison Company (Ohio Edison) to a wholly owned subsidiary of Ohio Edison, OES Nuclear Inc. (OES). By ''Application For License Transfer In Connection With Sale And Related Transactions'' filed November 17, 1995, Ohio Edison informed the Commission that it will sell to OES on or before December 31, 1995, a 17.42% ownership interest in the PNPP Unit 1 facility, except for the transmission facilities that are a part of Unit 1. On January 1, 1996, or immediately thereafter, OES will enter into a take or pay steam sale agreement with Ohio Edison pursuant to which Ohio Edison will purchase from OES the steam generated by the interest in PNPP Unit 1 transferred to OES. OES will also grant Ohio Edison the right to utilize the turbine generator portion of PNPP Unit 1 transferred to OES. Both the agreement for the sale of steam and the grant of the right to use the turbine generator will run for the term of the PNPP Unit 1 license through completion of plant decommissioning. Pursuant to the terms of the arrangements, Ohio Edison will have the option to convert the steam purchase agreement and its right to utilize the Unit 1 turbine generator to a lease to itself of the interest in PNPP Unit 1 conveyed to OES.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer of control is qualified to be a holder of the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission. Ohio Edison has requested consent under 10 CFR 50.80 to transfer of the license effectuated by the change in control of such ownership interest in PNPP Unit 1. Additionally, Ohio Edison has submitted a license amendment application, dated November 22, 1995, adding OES to the PNPP Unit 1 license, to reflect this transfer.

For further details with respect to this action, see the November 17, and 22, 1995 letters, which 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 Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland this 4th day of December 1995.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Director, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30049 Filed 12–8–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–255]

Consumers Power Company; Palisades Plant; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Consumers Power Company (the licensee) to withdraw its June 14, 1991 (as supplemented July 17, 1991, and January 10, 1992), application for a proposed amendment to Facility Operating License No. DPR–20 for the Palisades Plant, located in Van Buren County, Michigan.

The proposed amendment would have modified the facility operating license to allow an exception to the Palisades Final Safety Analysis Report requirement to perform the maximum hypothetical accident analysis in accordance with the Standard Review Plan, Section 15.6.5, Appendix B, Subsection II(1). The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on September 18, 1991 (56 FR 47233). However, by letter dated October 9, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 14, 1991, as supplemented July 17, 1991, and January 10, 1992, and the licensee's letter dated October 9, 1995, which withdrew the application for license amendment. The issue was addressed in a related safety evaluation dated January 9, 1995. Consumers Power Company will submit a revised maximum hypothetical accident analysis by January 1996. 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 Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 1st day of December 1995.

For the Nuclear Regulatory Commission.

Marsha Gamberoni,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30047 Filed 12–8–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Zion Nuclear Power Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of 10 CFR part 50, Appendix J, Paragraph III, Leakage Testing Requirements, to Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application dated November 28, 1995, as supplemented on December 6, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR part 50, Appendix J, Paragraph III.C and III.D, to the extent that exemptions would be granted due to system and penetration design.

The Need for the Proposed Action

The current Type C containment leak rate test requirements for Zion Nuclear Power Station, pursuant to 10 CFR part 50, Appendix J, Sections III.C and III.D.3 are that local leak rate periodic tests shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. ComEd has determined that the required tests have not been performed previously on the penetrations that form the basis for this exemption request. The exemptions are needed to allow the licensee to use an alternate testing method and thereby realize considerable cost savings, less radiological exposure and fewer unit thermal cycles with no adverse impact on public health and safety.

Environmental Impacts of the Proposed Action

The proposed exemptions would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the possible leak paths, availability of the isolation valve seal water system, prior Type A leak test results as they are impacted by leaks from the types of valves in question and the probability of the sequences of events necessary for significant leakage to occur through the identified pathways. The licensee has provided an acceptable basis for concluding that in spite of the proposed exemptions the containment leak rates would still be maintained within acceptable limits.

Accordingly, the Commission has concluded that the exemptions do not result in a significant increase in the amounts of any effluents that may be released nor do they result in a significant increase in individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemptions only involve Type C testing of the containment. They do not affect nonradiological plant effluents and have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the request for exemptions. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated December 1972, related to the operation of the Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on November 28, 1995, the NRC staff consulted with the Illinois State Official, Mr. Frank Niziolek; Head, Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letters dated November 28, 1995, as supplemented on December 6, 1995, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 7th day of December 1995.

For the Nuclear Regulatory Commission.

Clyde Y. Shiraki,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30253 Filed 12–8–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Public Information Collection Requirements, Request for Public Input; Personal Reference Inquiry for Administrative Law Judge Positions; Notice of Intent To Request OMB Approval for Continuation of Form OPM–192

AGENCY: U.S. Office of Personnel Management.

ACTION: Announcement of information collection; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the U.S. Office of Personnel Management (Office) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Personal Reference Inquiry for Administrative Law Judge positions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Comments are requested by February 9, 1996.

ADDRESSES: Direct all written comments to U.S. Office of Personnel Management,

Administrative Law Judges Office, Room 6321, 1900 E. Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Office of Personnel Management, Attn: John E. Flannery, Room 6321, 1900 E Street NW., Washington, DC 20415, Tel. (202) 606–0810.

SUPPLEMENTARY INFORMATION: The Office invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Office's request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the Office is soliciting comments concerning the following information collection.

Title: Personal Reference Inquiry for Administrative Law Judge Positions.

OMB Number: 3206–0043.

Form Number: OPM Form 192.

Abstract: OPM Form 192 is designed to collect information about an applicant's qualifications in as simple a manner as possible. It asks reference givers to circle statements indicating which of the behavioral statements describing the behavior of an attorney or a judge are most representative of the applicant. This format takes less time to complete and is less burdensome to the reference giver than the more traditional open-ended personal reference inquiry which asks for written statements assessing applicants' job qualifications. The circled marks on the returned form are easily scored.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Personal Reference Inquiry forms are not sent to small businesses or entities as such. However, the person from whom information is sought may be an employee or member of a small business or law firm. As explained in the above Abstract, the form is designed in a brief, six-question format which can be answered by including responses. Thus, the information collection burden on respondents is minimal.

Estimated Number of Respondents: Approximately 3,000 reference givers respond each year.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 500 hours.

Legal Citations: Under the provisions of the Administrative Procedures Act of 1946 in pertinent part, now 5 U.S.C. 553–559 and 3105, and 5 U.S.C. 1104 and 3304, the U.S. Office of Personnel Management (OPM) is required to identify through competitive examination qualified applicants for appointment to Administrative Law Judge (ALJ) positions. Further, under 5 U.S.C. 1305, OPM is specifically authorized to collect such information and reports as it needs to carry out its responsibility for examining applicants for ALJ positions.

Dated: November 7, 1995.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–29881 Filed 12–8–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36550; File No. SR–Amex–95–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Listing Standards for Options on Equity Securities Issued in a Reorganization Transaction Pursuant to a Public Offering or a Rights Distribution

December 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is published this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its listing standards in respect of options on equity securities issued in a spin-off, reorganization, recapitalization, restructuring or similar transaction where the issuance is made pursuant to a public offering or a rights distribution.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the special listing standards set forth in Amex Rule 915, Commentary .05 that apply to options on equity securities issued in certain spin-offs, reorganizations, recapitalizations, restructurings or similar transactions (referred to herein as ''restructuring transactions'') so as to also include securities issued pursuant to a public offering or a rights distribution that is part of a restructuring transaction.

The proposed amendment to Rule 915, Commentary .05 is intended to facilitate the listing of options on equity securities issued in restructuring transactions (referred to as ''Restructure Securities'') by permitting the Exchange to base its determination as to the satisfaction of certain of the listing standards set forth in Exchange Rule 915 and Commentary .01 thereunder by reference to (1) specified characteristics of the ''Original Security'' in respect of which the Restructure Security was issued or distributed; (2) the trading market of the Original Security; (3) the number of shares of the Restructure Security issued and outstanding; or (4) to the listing standards of the exchange on which the Restructure Security is

listed. Rule 915, Commentary .05 would permit the Exchange to certify a Restructure Security as options eligible sooner than if it had to wait until it could base its certification on characteristics of the Restructure Security itself, but only in circumstances where the factors relied upon make it reasonable to conclude that the Restructure Security will in fact satisfy applicable listing criteria.

As recently approved by the Commission, Amex Rule 915, Commentary .05 does not extend to restructuring transactions involving the issuance of a Restructure Security in a public offering or a rights distribution.[3] The questions raised by the proposed extension of Commentary .05 to Amex Rule 915 to reorganization transactions involving public offerings or rights distributions reflect that when a Restructure Security is issued in a public offering or pursuant to a rights distribution, it cannot automatically be assumed that the shareholder population of the Restructure Security and the Original Security will be the same. Instead the holders of a Restructure Security issued in a public offering will be those persons who subscribed for and purchased the security in the offering, and the holders of a Restructure Security issued in a rights distribution will be those persons who elected to exercise their rights. Even in the case of a distribution of nontransferable rights to shareholders of the Original Security, not all such shareholders may choose to exercise their rights. As a result, it cannot be assumed that the Restructure Security will necessarily satisfy listing criteria pertaining to minimum number of holders, minimum public float and trading volume simply because the Original Security satisfied these criteria.

On the other hand, the Exchange believes that the same reasons for wanting to make an options market available without delay to holders of securities issued in reorganizations that do not involve public offerings or rights distributions apply with equal force to securities issued in reorganizations that do involve public offerings or rights distributions, so long as there can be reasonable assurance that the securities satisfy applicable options listing standards. That is, holders of an Original Security who utilize options to manage the risks of their stock positions may well find themselves to be holders of both the Original Security and the Restructure Security following a reorganization because they chose to purchase the Restructure Security in a public offering or to exercise rights in order to maintain the same investment position they had prior to the reorganization. Such holders may want to continue to use options to manage the risks of their combined stock position after the reorganization, but they can do so only if options on the Restructure Security are available. The Exchange believes that it is important to avoid any undue delay in the introduction of options trading in such a Restructure Security in circumstances where there is sound reason to believe that the Restructure Security does in fact satisfy options listing standards.

Accordingly, the Amex proposes to add new paragraph (d) to Commentary .05 of Rule 915, to address situations where a Restructure Security is issued pursuant to a public offering or rights distribution. Pursuant to the proposed rule change, the Exchange may certify the Restructure Security as satisfying minimum shareholder and minimum public float requirements on the basis provided for in approved Commentary .05(c), only after at least five days of ''regular way'' trading. Moreover, after due diligence, the Exchange must have no reason to believe that the Restructure Security does not satisfy these requirements. Additionally, in order to base certification on Commentary .05 of Rule 915, the closing prices of the Restructure Security on each of the five or more trading days prior to the selection date must be at least $7.50. Finally, as is required for all underlying securities selected for options trading, trading volume in the Restructure Security must be at lease 2,400,000 shares during a period of twelve months or less up to the time the security is so selected.

The effect of the proposed rule change is that a Restructure Security issued pursuant to a public offering or a rights distribution that is part of a reorganization will be eligible for options trading only if it satisfies all of the existing standards applicable to the selection of underlying securities generally, except that (A) the Exchange may assume the satisfaction of the minimum public ownership requirement of 7,000,000 shares and the minimum 2,000 shareholders requirement if (i) either the percentage of value tests of subparagraph (a)(1) of Commentary .05 are met or the aggregate market value represented by the Restructure Security is at least $500,000,000; *and if* (ii) the Restructure Security is listed on an exchange of an automatic quotation system having equivalent listing requirements or at least 40,000,000 shares of the Restructure Security are issued and outstanding, *and if* (iii) after the Restructure Security has traded ''regular way'' for at least five trading days and after having conducted due diligence in the matter, the Exchange has no reason to believe that these requirements are not met, and (B) subject to the same percentage of value or aggregate market value requirements, the Restructure Security may be deemed to satisfy the minimum market price per share requirement if it has a closing market price per share of at least $7.50 during each of the five or more trading days preceding the date of selection, instead of having to satisfy this requirement over a majority of days over a period of three months. (In the event the Restructure Security has a closing price that is less than $7.50 on any of the trading days preceding its selection, it will have to satisfy this requirement on a majority of trading days over a period of three months before it can be certified as eligible for options trading.) For any Restructure Security issued in a public offering or a rights distribution that does satisfy these requirements, the effect of the proposed rule change will be to permit its certification for options trading to take place as early as on the sixth day after trading in the stock commences, instead of having to wait for three months of trading.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 in general, and furthers the objectives of Section 6(b)(5) in particular, by removing impediments to a free and open market in options covering securities issued in public offerings or pursuant to rights distributions as part of restructuring transactions and other similar corporate reorganizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i)

[3] *See* Securities Exchange Act Release No. 36020 (July 24, 1995), 60 FR 39029 (July 31, 1995) (order approving Commentary .05 to Amex Rule 915).

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with 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. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–95–47 and should be submitted by January 2, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30068 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36546; File No. SR–CBOE–95–49]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Telephone on the Floor of the Exchange

December 1, 1995.

I. Introduction

On August 25, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal regarding the adoption of a Regulatory Circular governing the use of member-owned or Exchange-owned telephones located at the trading post where options on the Standard & Poor's 100 Stock Index (''OEX'') options are traded. The proposed rule change was published for comment and appeared in the Federal Register on October 13, 1995.[3] No comments were received regarding the proposal.[4] This order approves the proposal.

II. Description of the Proposal

The purpose of the Regulatory Circular is to permit telephones located at the OEX trading post on the floor of the Exchange to provide members and clerks with access to outside lines for outgoing calls, subject to the conditions set forth in the Regulatory Circular. With the exception of the prohibition on the use of telephones at the OEX trading post to receive incoming calls, these conditions are the same as those the Commission previously approved governing the use of telephones at the equity option trading posts on the floor of CBOE.[5] Because there are no restrictions on where a member may place an outgoing call, telephones at the OEX trading post may be used to place orders in equity or futures markets.[6]

Exchange Rule 6.23 prohibits members from establishing or maintaining any telephone or other wire communications between their offices and the Exchange floor without prior Exchange approval, and it authorizes the Exchange to direct the discontinuance of any communication facility terminating on the Exchange floor. Pursuant to this rule, the Exchange adopted the Regulatory Circular to permit the installation of outside telephone lines at the OEX trading post, and to adopt conditions governing their use.

The proposed rule change also imposes user fees on members who are approved to use Exchange-installed telephones located at the OEX trading post. The Exchange is adopting these fees pursuant to Exchange Rule 2.22, which permits the Exchange to impose fees on members for the rule of Exchange facilities or for any services or privileges granted by the Exchange.

The conditions imposed by the Regulatory Circular on the use of telephones at the OEX trading post are as follows:

1. The telephones may not be used to receive orders, but may be used to provide quotes that have been publicly disseminated pursuant to Rule 6.43.

2. Members may give their clerks their PIN access code. Although both members and clerks may use the telephones, members will have priority. Each member will be responsible for all calls made using that member's PIN access code.

3. Headsets will not be permitted on the telephones in the post pit. Portable or cellular phones also will not be permitted.

4. Clerks will not be permitted to establish a base of operation utilizing telephones at the OEX post.

5. Members and their clerks using the telephones are required to consent to recording of conversations on telephones at the OEX post.

6. The telephones are to be used for voice service only. Data services CPC's, fax, etc.) will remain subject to Exchange consent under a separate program.

7. Only outgoing calls may be made on the telephones; incoming calls are not permitted.

The Exchange intends to enforce these conditions as rules of the Exchange, and has advised members that violations may lead to formal disciplinary proceedings.

The Exchange's proposal is limited to outgoing calls only. The Exchange has stated that telephones at the OEX trading post should not be used to receive customer order until it has given further consideration to relevant regulatory issues, including how to provide customers with access to the trading floor on a fair and non-discriminatory basis, how to assure that persons on the floor are qualified to receive orders directly from customers,

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36331 (October 3, 1995), 60 FR 53440.

[4] The Exchange previously filed a proposal concerning its OEX trading post telephone policy that became effective upon filing pursuant to Section 19(b)(3)(A) of the Act. Securities Exchange Act Release No. 35725 (May 17, 1995), 60 FR 27575. The Commission received one comment letter objecting to the prohibition on the use of telephones at the OEX post to receive orders. Letter from David C. Bohan, Jenner & Block, to Jonathan G. Katz, Secretary, Commission, dated June 14, 1995. The Commission published the CBOE's current proposal for a full 21 day comment period, and has received no comments.

[5] *See* Securities Exchange Act Release No. 33701 (March 2, 1994), 59 FR 11336.

[6] The telephone policy also allows members to use the floor telephones to provide quotations on OEX options. In using the telephones for this purpose, members may only provide quotations that have been publicly disseminated pursuant to CBOE Rule 6.43.

and how to surveil order-taking activity conducted over floor telephones.[7]

III. Discussion

The Committee 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),[8] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and maintain fair and orderly markets. Specifically, the Commission believes the proposed rule change should help to promote improved relationships between the OEX trading crowds and the member firms and facilitate efficient access to underlying markets. Providing procedures whereby members in the OEX options crowd can readily communicate with the off-floor offices of member firms as well as other locations off of the Exchange's trading floor, will allow them to obtain and transmit information more efficiently which may result in benefits to investors by improving execution of orders.

Further, incorporating the procedures contained in the Regulatory Circular into the Rules of the Exchange will enable the Exchange to monitor better the use of the floor telephones and to discipline members for violations of those rules. As noted above, because the proposed telephone policy does not restrict where a member may call, the telephones may be used to place orders in underlying stocks and in futures markets.[9]

With respect to equity-related transactions, while the telephones may give options market makers more immediate access to the market in the underlying securities, the Commission believes that the CBOE's surveillance systems currently in place are adequate to detect and deter any such attempts at manipulation including frontrunning. It also should be noted that the S&P 100 Index, on which OEX options are based, is a capitalization-weighted index of 100 different blue chip stocks. The fact that the value of OEX options is derived from the value of these stocks, combined with the large number of stocks included in the index, suggests that the type of information that may be available at the OEX trading post is not likely to be significant in predicting future changes in the index.

With respect to futures-related transactions, the Commission believes that the Exchange will be able to conduct adequately surveillance for improper activities as a result of the transaction information provided to the Exchange by the Chicago Mercantile Exchange (''CME'') pursuant to the Exchange's surveillance sharing agreement with the CME. Although the surveillance information obtained by the Exchange would not indicate that the floor telephones were used to enter into a potentially improper futures transactions, the Exchange's ability to conduct surveillance for potential manipulation will not be hindered because of the existence of floor telephones at the OEX options posts on the floor of the Exchange. Additionally, the Commission also notes that surveillance information is shared through the Intermarket Surveillance Group (''ISG'') [10] which the CME and the Chicago Board of Trade joined as affiliate members in 1990.

The Commission believes that the Exchange's prohibition on the use of telephones to receive incoming calls is justified by legitimate regulatory concerns. Specifically, issues such as the possible misuse of non-public information, the need to ensure compliance with rules designed to assure the qualifications of members who accept orders directly from public customers, and how to provide adequate surveillance over this activity need to be addressed.

The Exchange's proposal also prohibits the use of portable, cellular, and headset telephones on the OEX options trading floor. Prohibiting the use of portable telephones aids in ensuring that market makers will be physically present at the OEX options trading posts where the options classes to which they have been appointed are traded. It is not unreasonable for the CBOE to take measures to ensure the physical presence of market makers at the OEX trading post in order to promote the maintenance of fair and orderly markets. The Exchange believes that the prohibition should enable it to monitor and control telephone usage at the trading post, and minimize disruption of trading at the post. In addition, the Exchange notes that currently available technology would not permit a large number of portable or cellular telephones to be used in the environment of the trading floor without significant deterioration or interruption of service. As a result, the Commission believes that this restriction is within the discretion of the Exchange and does not raise regulatory concerns.[11]

The Exchange has represented that since the Regulatory Circular was issued and telephones at the OEX options trading post have been installed, the Exchange has not received any complaints concerning their use, nor detected any violations of the procedures set forth in the Regulatory Circular.[12]

Finally, the Commission believes that the CBOE's proposed fees for the use of the telephones are consistent with the requirement under Section 6(b)(4) of the Act that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members. CBOE Rule 2.22 allows the Exchange to impose fees on members relating to the use of Exchange facilities or for any services or privileges granted by the Exchange. The Exchange has stated that the proposed fees generally will be the same as those charged for the use of telephones at the equity trading posts.[13]

In summary, because the Commission believes that installing telephones at the OEX options post on the floor of the Exchange may result in benefits to investors by allowing market makers to hedge their options positions more efficiently through improved immediate access to underlying markets while not impairing or diminishing the ability of the Exchange to conduct surveillance for improper equity-related or futures-related trading activity, the Commission finds that the proposed rule change is

[7] The Exchange states that it intends to consider these issues in the near future, and depending on its conclusions, the Exchange may determine to revise or eliminate these conditions pursuant to a subsequent rule filing under Section 19(b) of the Act.

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] The proposed rule change also allows members to use the floor telephones for the purpose of providing quotations that have been publicly disseminated pursuant to CBOE Rule 6.43.

[10] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigate information sharing arrangements in the stock and options market. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stocks and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the Chicago Mercantile Exchange and the Chicago Board of Trade joined the ISG as affiliate members in 1990. *See* Intermarket Surveillance Group Agreement, July 14, 1983.

[11] This does not imply that the Exchange is prohibited from allowing portable telephones on its floor, subject to appropriate safeguards. Rather, that it is not inconsistent with the Act for the CBOE to prohibit them for the reasons discussed above.

[12] Telephone Conversation between Timothy Thompson, Senior Attorney, CBOE, and Francois Mazur, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on November 21, 1995.

[13] Specifically, local calls over Exchange telephones will be charged at 10 cents per minute. Long distance calls over Exchange telephones will be charged at a rate 25% greater than the Exchange's direct costs. In addition, the Exchange will charge a $5 monthly fee for the use of the phones.

consistent with the requirements of the Act.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–CBOE–95–49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30073 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36545; File No. SR–DTC–95–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change to Establish a Coupon Collection Service for Municipal Bearer Bonds

December 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 18, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–95–18) as described in Items I, II, and III below, which items have been prepared primarily by DTC. On October 30, 1995, DTC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing the proposed rule change to establish a coupon collection service program in order to provide its participants with a cost effective method for the collection of interest relating to the coupons from municipal bearer bonds.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division of Market Regulation (''Division''), Commission (October 26, 1995).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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 Items IV below. DTC has prepared summaries, set forth in sections (A), (B), (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC seeks to establish a coupon collection service in order to provide DTC's participants with a cost-effective method for the collection of interest relating to the coupons from municipal bearer bonds. This service will include collection of coupons which are due in the future as well as past due coupons for DTC eligible and ineligible municipal issues payable in the United States. Past due coupons will be accepted for up to three years after the payable date.

DTC participants will be required to deposit coupons in a standard sealed envelope or ''shell'' with no more than two hundred coupons contained in any one shell. Only coupons for the same CUSIP number, series, and payable date can be enclosed in any one shell. Mutilated coupons will be required to be guaranteed by the depositing participant and placed into separate shells.[4] DTC will require that each shell contain the following information on its face: (i) CUSIP number; (ii) a description of the issue including municipality, state, purpose, series, date of issue, and maturity date; (iii) payable date; (iv) quantity of coupons enclosed; (v) dollar value of individual coupons; (vi) total shell value; (vii) participant number; and (viii) contact name and telephone number of the depositing participant.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] The validity of the coupon number, bond number, payable date, and payable amount of the mutilated coupon will be guaranteed by the depositing participant by a stamp affixed to the coupon executed by an authorized officer of such participant. In cases of a badly mutilated coupon, DTC may require a letter of indemnity. In the event a paying agent rejects a mutilated coupon, any credit made to the depositing participant's account with respect to such coupon will be reversed. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC; Ann Reich, DTC; and Mark Steffensen, Attorney, Division, Commission (October 17, 1995).

All shells must be accompanied by a complete deposit ticket that includes: (i) DTC participant number; (ii) shell quantity; (iii) total dollar value; (iv) CUSIP number per shall; (v) coupon quantity per shell; (vi) dollar value per shell; and (vii) whether the coupons are payable on a future date or are past due.[5]

DTC will verify the number of shells listed on the deposit ticket and give the participant a time-stamped copy of the ticket. If the number of shells listed on the deposit ticket does not agree with the physical number of shells, DTC will immediately reject the entire deposit and will return it to the participant. DTC will neither inspect nor verify the shell contents prior to presentation to the paying agent. The depositing participant is responsible for the integrity of the shell contents. In the event of a coupon shell loss, the participant will be required to provide DTC with a full description (including certificate number) of the coupons contained in the shell.

Coupons may be rejected by the paying agent and returned to the depositing participant for a variety of reasons. The most common reasons for rejection are likely to include: (i) Mixed shell contents including mixed payable dates, mixed series or purposes, or mixed maturity years; (ii) incorrect count of shell contents; (iii) called certificate; (iv) mutilated coupon; (v) stopped certificate; [6] or (vi) issue in default.

DTC will act simply as a conduit between the participant and the paying agent. In this capacity, DTC will pass through rejected shells to DTC participants in the form received from the paying agent together with any paying agent documentation. DTC will neither inspect nor verify the contents of rejected shells. For shells rejected after the payable date, appropriate funds will be debited from the participant's account on the day the rejected coupons are returned to the participant.

Interest for coupons for which the paying agent is located outside of New York City that are deposited at least

[5] When the coupons are due in the future, each deposit ticket can have up to 50 shells attached to it, but each of the attached shells must have the same payable date. For past due coupons, shells with different deposit dates may be listed on the same deposit ticket. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division, Commission (October 26, 1995).

[6] A ''stopped certificate'' is a certificate for which a stop transfer instruction has been requested. A stop transfer instruction typically is initiated as the result of a lost or stolen stock certificate. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC, and Mark Steffensen, Attorney, Division, Commission (September 26, 1995).

eight business days prior to payable date will be credited to the participant on the payable date. Interest for coupons for which the paying agent is located outside of New York City that are deposited less than eight business days prior to payable date will be credited to the participant ten business days following the date of the deposit. Interest for coupons for which the paying agent is located in New York City that are deposited at least five business days prior to the payable date will be credited to the participant on the payable date. Interest for coupons for which the paying agent is located in New York City that are deposited less than five business days prior to payable date will be credited to the participant seven business days following the date of the deposit. Interest for past due coupons will be credited to the participant as if they were received less than eight business days prior to the original payable date if the paying agent is located outside New York City and less than five business days prior to the original payable date if the paying agent is located in New York City.[7]

DTC will credit the accounts of its depositing participants on the foregoing payable dates without regard to whether DTC actually has received the interest payment from the issuer or paying agent as of such date.[8] All coupons deposited after 11:00 a.m. will be considered to be received the following business day. In addition, during the first quarter of 1996, a new Participant Terminal System function will be made available which will enable DTC participants to view the status of their coupon deposits.

DTC proposes to charge its participants the following fees for this service:

Shells deposited a minimum of 15 days before payable date: $4.50.
Shells deposited less than 15 days before payable date (including past due coupons): $5.25.
Rejected shells: $15.00.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions. The proposed rule change will be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments from DTC participants and others have not been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 DTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with 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 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–18 and should be submitted by January 2, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30072 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[7] DTC will accept past due coupons into the coupon collection service program for up to three years after the original coupon payment date.

[8] According to DTC, payments due DTC from issuers and paying agents are received on or before the payable date between 97 and 98 percent of the time. Typically, late payments are the result of transmission problems or equipment failures that are unrelated to the ability of the issuer or paying agent to actually make such payments. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC; Ann Reich, DTC; and Mark Steffensen, Attorney, Division, Commission (October 17, 1995).

[9] 15 U.S.C. § 78q–1 (1988).

[10] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36544; International Series Release No. 897; File No. SR–GSCC–95–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Permitting Entities Established or Organized in a Foreign Country to Become Members of GSCC's Netting System

December 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 6, 1995, Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–GSCC–95–05) as described in Items, I, II, and III below, which items have been prepared primarily by GSCC. On October 30, 1995, GSCC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend GSCC's rules to enable entities that are established or organized in a foreign country and regulated in a manner comparable to domestic entities eligible for GSCC membership to become members of GSCC's netting system.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (October 26, 1995).

[3] The netting system is a system for aggregating and matching offsetting obligations resulting from trades submitted by or on behalf of members in eligible securities. The resulting deliver, receive, and payment obligations are settled through designated clearing banks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (C), and (B) below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to permit entities that are organized or established under the laws of a country other than the United States (''foreign entities'') and that are regulated in a manner comparable to domestic entities eligible for GSCC membership to become members of GSCC's netting system. Currently, a foreign entity is eligible to apply to become a comparison-only member if it has demonstrated to GSCC that its business and capabilities are such that it could reasonably expect material benefit from direct access to GSCC's services. The proposed rule change also will establish new requirements applicable to foreign comparison-only members.

Currently, GSCC has eleven enumerated categories of netting system membership. A foreign entity is not eligible for any of these categories of netting membership. Nevertheless, foreign entities are among the most significant participants in the government securities marketplace and trade actively with many current netting members. Six of the seven firms on GSCC's list of grandfathered entities (Daiwa Europe Ltd.; Nikko Europe PLC; The Nikko Securities Co., Ltd., Tokyo; Nomura International PLC, London; Nomura International Inc., Tokyo; and Nomura Securities Co., Ltd., Tokyo) are foreign entities.[5] GSCC believes it is appropriate for regulated foreign entities to be eligible for netting system membership and proposes to establish a new category of netting system membership for such foreign entities.

GSCC recognizes that admitting foreign entities to netting system membership raises various unique issues and concerns for GSCC in connection with the legal and financial requirements for those entities, information sharing obligations, the requirements of the foreign entities' home country, and the physical presence of the foreign entities in the United States. GSCC's proposed rule change addresses each of these issues as discussed below. Except as otherwise indicated, the requirements set forth below are not applicable to a foreign entity that applies for membership only in GSCC's comparison system.

1. Legal Considerations

In order to address the particular legal concerns raised by the admission of foreign entities to netting system membership, GSCC will require foreign netting system applicants to enter into a special netting member agreement (''Agreement''). The Agreement, which generally requires the foreign netting system applicant to adhere to GSCC's rules, will provide that the Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Under the Agreement, the foreign entity (i) irrevocably waives all immunity for attachment of its assets in this country, (ii) irrevocably submits to the jurisdiction of a court in the U.S. with respect to any action or proceeding brought against it relating in any way to the Agreement, (iii) irrevocably waives any objection to the laying of venue in a court in the U.S., (iv) expressly states that any judgment obtained against it by GSCC may be enforced in the courts of any jurisdiction where it or any of its property may be found and will irrevocably submit to the jurisdiction of each such court, (v) agrees that payment of any judgment obtained by GSCC shall be in U.S. dollars, and (vi) agrees to provide GSCC with information on its financial condition and/or trading activity that is deemed pertinent by GSCC and understands and agrees that any such information may be provided by GSCC to the Commission.

GSCC further will require the foreign netting system applicant to submit an opinion of foreign counsel (''Opinion''). The Opinion must provide that the execution by the foreign entity of the Agreement with GSCC, the foreign entity's performance under the Agreement, and the exercise by GSCC of its rights and remedies under the Agreement will not conflict with or be impeded by the laws or regulations of the foreign entity's home country and will be respected by the foreign entity's primary foreign regulator. In addition, the Opinion must state that the Agreement's provision for governance by and construction in accordance with the laws of the State of New York will be recognized and given effect by the courts of the foreign entity's home country.

The Opinion also must provide the (i) The waiver by the foreign entity of all immunity from attachment of its assets in the U.S. is valid and will be recognized and given effect by the courts of the foreign entity's home country, (ii) for foreign entity has the power to irrevocably submit to the jurisdiction of a court in the U.S. and to waive all objections to venue, (iii) any judgment obtained against the foreign entity by GSCC may be enforced in the courts of any jurisdiction where the foreign entity or any of its property may be enforced in the courts of any jurisdiction where the foreign entity or any of its property may be found and its submission to the jurisdiction of each such court is valid and will be recognized and given effect by the courts of the foreign entity's home country, (iv) GSCC can institute in the foreign entity's home country an action for breach of the Agreement without first having to obtain a judgment against the entity in the U.S., and (v) GSCC can institute in the U.S. an action for breach of the Agreement without first having to obtain a judgment against the entity in the entity's home country. Finally, the Opinion must state that the foreign entity has the power to provide GSCC with information in its financial condition and/or trading activity that is deemed pertinent by GSCC and that neither the foreign entity's compliance with such a request nor the sharing by GSCC of such information with the Commission will conflict with or be impeded by the laws or regulations of the foreign entity's home country and will be respected by the foreign entity's primary foreign regulator.

In addition to the Agreement and the Opinion, GSCC also will require any foreign netting system applicant to submit a designation specifying an appropriate person or persons located in the State of New York as its agent to receive service of process or other legal summons.

While there will be no special agreement applicable to a foreign entity that applies for membership in GSCC's comparison system, such entity will be required to provide to GSCC an opinion of foreign counsel stating that (i) the execution by the foreign entity of the

[4]The Commission has modified the text of the summaries prepared by GSCC.

[5]GSCC maintains a list of ''grandfathered'' entities which are non-netting system members that historically have done business with GSCC's interdealer netting members. Business done by the interdealer broker netting members with grandfathered entities is treated by GSCC as business done with an actual netting member. GSCC's goal is to eliminate the list of granfathered entities by having each of the entities on that list become a member of the netting system.

comparison-only member agreement (''Comparison Agreement'') with GSCC, its performance under that agreement, and the exercise by GSCC of its rights and remedies under that agreement will not conflict with or be impeded by the laws or regulations of the foreign entity's home country and will be respected by the foreign entity's primary foreign regulator and (ii) the language in the Comparison Agreement providing that the agreement shall be governed by and construed in accordance with the laws of the State of New York will be recognized and given effect by the courts of the foreign entity's home country.

2. Minimum Financial Standards and Clearing Fund Requirements

GSCC also seeks to amend its rules to establish minimum financial standards and clearing fund requirements for foreign netting system applicants. The minimum financial standards, the clearing fund deposit, and any other payments or deposits called for under GSCC's rules required to be met by a foreign meeting system member will be the same as those applicable to the domestic netting system membership category that in GSCC's sole determination is most comparable in type to the foreign entity. In making this determination, GSCC will take into account, among other things, whether the entity's trading activity is done primarily for itself or for others. If a foreign netting system members falls out of compliance with its minimum financial requirements, the consequences of such noncompliance shall be determined by reference to the subsection of GSCC Rule 3, Section 5 that is applicable to the netting system membership category upon which the foreign entity's minimum financial standards are based.

3. Home Country Standards

In order to be eligible for netting system membership, the foreign entity will have to be in compliance with the financial reporting and responsibility standards of its home country. The foreign entity applying for netting system membership will have to be regulated in its home country in ways and pursuant to provisions comparable to those imposed on domestic members of a comparable type.

4. Information Sharing/Regulatory and Financial Reporting

To insure appropriate information sharing, the foreign entity applying for netting system membership must have a home country regulator that has entered into a memorandum of understanding with the Commission regarding the sharing or exchange of information. In its application for membership (either comparison-only or netting system), the foreign entity will have to agree to provide GSCC with all material regulatory filings made with its primary home country regulator over the prior year, audited financial statements for the prior three years, and any other financial information deemed by GSCC to be necessary in order to protect GSCC and its members. Upon acceptance to comparison-only or netting system membership, a foreign member must provide GSCC with all material regulatory filings made with its primary home country regulator promptly following its filing with such regulator, audited financial statement, and any other financial information deemed by GSCC to be necessary in order to protect GSCC and its members.

GSCC ordinarily will accept for financial monitoring purposes audited financial statements prepared in accordance with the home country's generally accepted accounting principles (''GAAP''). If GSCC believes that those statements are not satisfactory, it will assess whether the foreign entity can provide information equivalent to that information provided by financial statements prepared in accordance with U.S. GAAP. All required financial and other reports will have to be submitted to GSCC in English. All required financial reports will have to be submitted to GSCC in dollar equivalents indicating the conversion rate and date used.

As noted above, pursuant to the Agreement the foreign netting system member will have agreed to provide GSCC with information on its financial condition and/or trading activity deemed pertinent by GSCC and that GSCC may share this information with the Commission. In addition, GSCC will expect the foreign entity to prepare and provide to GSCC information in the form of unaudited financials sufficient for GSCC to monitor and assess the entity's financial condition on no less than a quarterly basis.

5. Physical Presence

With respect to the foreign netting member's physical presence in the U.S., GSCC will require every foreign entity to maintain an office in the U.S. either directly or through a suitable agent that (i) has available individuals fluent in English who are knowledgeable about the entity's business and can assist GSCC representatives as necessary and (ii) ensures that the foreign member can meet its data submission and settlement obligations to GSCC.

GSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will extend the benefits of GSCC's netting and risk management processes to a broader segment of government securities market participants and will provide those benefits to trades of current members with foreign entity counterparties.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited. GSCC members will be notified of the rule filing and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication in this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street 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 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 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–95–05 and should be submitted by January 2, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30069 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36551; File No. SR–OCC–95–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Amending the Agreements Governing Non-Proprietary Cross-Margining Accounts of Market Professionals in the Cross-Margining Program Among The Options Clearing Corporation (''OCC''), the Intermarket Clearing Corporation (''ICC''), and the Chicago Mercantile Exchange, in the Cross-Margining Program Between OCC and ICC, and in the Cross-Margining Program Between OCC and the Kansas City Board of Trade Clearing Corporation

December 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 15, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–95–12) as described in Items I, II, and III below, which items have been prepared primarily by OCC. On September 12, 1995, and on October 11, 1995, OCC filed amendments to the proposed rule change to include in addition to proposed changes to the agreements governing non-proprietary cross-margining (''XM'') accounts in the XM program between OCC, The Intermarket Clearing Corporation (''ICC''), and the Chicago Mercantile Exchange (''CME''), proposed changes to the agreements governing non-proprietary XM accounts in the XM program between OCC and ICC and in the XM program between OCC and the Kansas City Board of Trade Clearing Corporation (''KCC''), respectively.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the agreements governing non-proprietary XM accounts of market professionals in the OCC/ICC/CME XM program, in the OCC/ICC XM program, and in the OCC/KCC XM program in order to implement the revised distributional scheme adopted by the Commodity Futures Trading Commission (''CFTC'') in the new appendix to the CFTC's bankruptcy rules.[3] The proposed rule change also seeks to revise the terms of the agreements government the proprietary and non-proprietary XM accounts in the OCC/KCC XM program to conform the terms of those agreements to the terms currently used in the forms of agreements in the OCC/ICC/CME XM program and in the OCC/ICC XM program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change seeks to amend the agreements governing non-proprietary XM accounts of market professionals to correspond with the requirements of the distributional scheme adopted by the CFTC as a new appendix to its bankruptcy rules. The proposed rule change also seeks to conform the terms of the agreements governing the proprietary and non-proprietary XM accounts in the OCC/KCC XM program to make the terms of those agreements substantially identical to the terms currently used in the forms of agreements in the OCC/ICC/CME XM program and the OCC/ICC XM program.

In November 1991, the Commission and the CFTC approved non-proprietary cross-margining.[5] As part of the CFTC's approval, it required each futures commission merchant (''FCM'') participating in cross-margining to agree that all funds and property in a non-proprietary XM account would be treated as customer property subject to the segregation requirements of the Commodity Exchange Act[6] and to segregate such fund and property from that of non-XM customers. In addition, the CFTC required each market professional to subordinate its XM related claims to customer claims based on non-XM positions.

Pursuant to that subordination requirement, if a clearing member became insolvent, all non-XM customers of the FCM would be paid their pro-rata share of the combined segregated funds pool, including funds of XM market professionals, before the XM market professionals received any portion of their claims. The subordination was intended to insulate non-XM customers from losses arising from XM accounts. The subordination also ensured that the XM accounts of market professional would not be treated as accounts of securities customers subject to liquidation under the Securities Investors Protection Act of 1970[7] or the stock broker liquidation provisions of the Bankruptcy Code.[8] Therefore, the accounts could be liquidated as accounts of commodity customers under the commodity broker liquidation provisions of the Bankruptcy Code[9] and the CFTC's bankruptcy rules,[10] and both the

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from Jean M. Cawley, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (September 11, 1995, and October 10, 1995).

[3] The CFTC's distributional requirements are set forth in Appendix B to Part 190 of the CFTC's General Regulations. 17 CFR 190. The CFTC's distributional framework was adopted in April 1994. 59 FR 17468 (April 13, 1994).

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] Securities Exchange Act Release Nos. 29991 (November 26, 1991), 56 FR 61458 (order approving OCC/CME non-proprietary XM program); 56 FR 61404 (Comm. F. T. Comm'n 1991) (order approving OCC/CME non-proprietary XM program); 30041 (December 5, 1991) 56 FR 64824 [File Nos. SR–OCC–90–04 and SR–ICC 90–03] (order approving OCC/ICC non-proprietary, market professional cross-margin program); and 56 FR 61406 (Comm. F. T. Comm'n 1991) (order approving OCC/ICC non-proprietary cross-margin program). In August 1993, the Commission approved expansion of the OCC/KCC XM program established in February of 1992 to include non-proprietary positions. Securities Exchange Act Release No. 32708 (August 2, 1993), 58 FR 42586 [File No. SR–OCC–93–13] (order approving OCC/KCC non-proprietary XM program).

[6] 7 U.S.C. § 6d(2) (1988) and 17 CFR 1.20 (1991).

[7] 15 U.S.C. §§ 78aaa–78*lll* (1988).

[8] 11 U.S.C. §§ 741–752 (1988).

[9] 11 U.S.C. §§ 761–766 (1988).

[10] 17 CFR 190.01–190.10.

[6] 17 CFR 200.30–3(a)(12) (1994).

Commission's order and the CFTC's order approving non-proprietary XM provide for such result.

The CFTC has adopted new rules that provide for a different distributional framework for funds and property carried in a non-proprietary XM account.[11] The new revised rules continue the concept of subordination for the purpose of ensuring that the market professionals' securities included in a XM account will be subject to commodity broker liquidation rules but modify the method for property distribution in the event of the liquidation of the firm(s) carrying the non-propriety XM account. Under the revised distributional scheme, FCMs will continue to make separate calculations for non-XM customers and XM market professionals, and funds deposited pursuant to those calculations will continue to be separately maintained. However, in the event of the failure of the firm(s) carrying the non-proprietary XM accounts, the respective shortfalls, if any, of the pools of funds would be determined as a percentage of the segregation requirement for each pool.

In the event of (i) No shortfall in either pool, (ii) an equal percentage of shortfall in both pools, (iii) a shortfall in the non-XM pool only, or (iv) a greater percentage of shortfall in the non-XM pool than in the XM pool, then the two pools of segregated funds would be combined and non-XM customers and XM market professionals would share pro rata in the combined pool. In the event of (i) a shortfall in the XM pool only or (ii) a greater percentage shortfall in the XM pool than in the non-XM pool, then the two pools of segregated funds would not be combined. Instead, XM market professionals will share pro rata in the pool of XM segregated funds while non-XM customers would share pro rata in the pool of non-XM segregated funds.

In order to implement the new distributional requirements, the clearing organizations operating non-proprietary XM programs must submit amended agreements to the respective regulatory authorities deleting the subordination requirement and substituting a reference to the CFTC's distribution rules. Accordingly, OCC is proposing to make those and other conforming changes[12] to the agreements governing non-proprietary XM accounts for the XM program among OCC, CME, and ICC, the XM program between OCC and ICC, and the XM program between OCC and KCC.[13]

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–12 and should be submitted by January 2, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30070 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[11] *Supra,* note 3.

[12] The conforming changes include terms that ensure that non-broker-dealer XM market professional will not be treated as ''customers'' for purposes of Rule 15c3–3 under the Act pursuant to the conditions set forth in the Commission's no-action letter dated July 31, 1995. Letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Jean Cawley, OCC (July 31, 1995).

[13] In addition, pursuant to the amendment filed on October 11, 1995, OCC proposes to revise the agreements governing the proprietary XM accounts in the OCC/KCC XM program to conform the terms of those agreements to the terms used in the agreements used in the OCC/ICC/CME and OCC/ICC XM programs.

[14] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21565; File No. 812–9698]

CIGNA Variable Products Group, et al.

December 4, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: CIGNA Variable products Group (the ''Trust''), CIGNA Investments, Inc. (''CIGNA'') and certain life insurance companies and their separate accounts investing now or in the future in the Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust and shares of any other investment company that is designed to fund insurance products and for which CIGNA, or any of its affiliates, may serve as investment advisor, administrator, manager, principal underwriter or sponsor (collectively, with the Trust, the ''Funds'') to be sold to and held by: (a) Variable annuity and variable life insurance separate accounts of both

affiliated and unaffiliated life insurance companies (the ''Participating Insurance Companies''); and (b) qualified pension and retirement plans outside of the separate account context (the ''Plans'').

FILING DATE: The application was filed on July 31, 1995 and amended on August 28, 1995. Applicants represent that an amendment to the application will be filed during the notice period.

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 by writing to the Secretary of the SEC 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 December 27, 1995, and 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 interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Jeffrey S. Winer, Esq., CIGNA Variable Products Groups, 900 Cottage Grove Road, S–215, Hartford, Connecticut 06152–2215.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Counsel, or Wendy Friedlander, Deputy Chief, both 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 Public Reference Branch of the SEC.

Applicants' Representations

1. The Trust is an open-end, management investment company organized as a Massachusetts business trust. Currently, the Trust has one series of shares, the Companion Fund.

2. CIGNA serves as the investment advisor for the Trust. CIGNA is a Delaware corporation registered as an investment advisor under the Investment Advisers Act of 1940.

3. The Trust currently offers its shares to and its shares are held by CG Variable Annuity Account I (''Account I'') and CG Variable Annuity Account II (''Account II'') of Connecticut General Life Insurance Company (''Connecticut General''). Account I and Account II are separate accounts registered with the Commission under the 1940 Act as unit investment trusts. The Trust serves as the investment vehicle for variable annuity contracts issued by Connecticut General. Shares of the Trust are also sold to and held by Connecticut General on behalf of the Connecticut General Field Individual Deferred Compensation Plan.

4. Applicants state that, upon the granting of the order requested in this application, the Trust intends to offer shares of its existing and future portfolios to separate accounts, registered as investment companies under the 1940 Act, of Connecticut General and of other unaffiliated insurance companies (collectively, the ''Accounts''), to serve as an investment vehicle for various types of insurance products. These products may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts (collectively, the ''Contracts''). The Trust also may offer shares of its portfolios directly to the Plans outside of the separate account context.

5. In connection with any Contract issued by a Participating Insurance Company, Applicants state that each such company will have the legal obligation of satisfying all applicable requirements under the federal securities laws. Applicants further state that the role of the Funds under this arrangement, insofar as the federal securities laws are applicable, will consist of offering shares to the Accounts and to the Plans and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

6. Applicants state that, due to the applicable tax law, the Funds wish to avail themselves of the opportunity to increase their asset base through the sale of shares of the Funds to the Plans. The Plans may choose any of the Funds as the sole investment option under the Plan or as one of several investment options. Participants may be given an investment choice depending upon the Plan. Shares of any of the Funds sold to Plans will be held by the trustees of the Plans as mandated by Section 403(a) of the Employee Retirement income Security Act (''ERISA''). CIGNA will not act as investment advisor to any of the Plans that will purchase shares of the Funds. Applicants note that, pursuant to ERISA, pass-through voting is not required to be provided to participants in the Plans. Thus, Applicants state that there will be no pass-through voting provided to the participants in the Plans.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to a separate account's investment advisor, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares, ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' ''Mixed and shared funding'' denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed funding as well as shared funding.

2. Applicants state that because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds are also to be sold to Plans.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b) (15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the

shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Thus, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans.

5. Applicants state that changes in the tax law have created the opportunity for the Funds to increase their asset base through the sale of Fund shares to the Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment advisor to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment advisor or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a).

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require such privileges.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment advisor, when required to do so by an insurance regulatory authority.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment advisor, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

12. Applicants further represent that the Funds' sale of shares to the Plans does not impact the relief requested in this regard. As noted previously by Applicants, shares of the Funds sold to Plans would be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the

exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans.

13. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

14. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Fund.

15. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment advisor initiated by owners of the Contracts. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

16. Applicants state that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any Participating Insurance Company, type of Contract, or Plan.

17. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

18. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Account or the Plan is unable to net purchase payments to make the distributions, the Account or the Plan will redeem shares of the Funds at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan. A Participating Insurance Company will surrender values from the Account into the general account to make distributions in accordance with the terms of the Contract.

19. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that the Funds will inform each shareholder, including each Account and Plan, of its respective share of ownership in the respective Funds. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

20. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security'', as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the Accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

21. Finally, Applicants state that there are no conflicts between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually are unable to simply redeem their separate accounts out of one fund and invest those monies in another fund. Generally, to accomplish such redemption and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participant-directed Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Plans conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independenty, redeem shares out of the Funds.

22. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the

Plans and owners of the Contracts issued by the Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

23. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management; and the lack of name recognition by the public of certain insurers as investment professionals. Applicants argue that use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of the Funds' investment advisor, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants argue that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

24. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and sharing funding where shares of a fund were sold directly to qualified plans such as the Plans.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Trustees or Board of Directors of each fund (each, a ''Board'') shall consist of persons who are not ''interested persons'' of the Funds, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners of all of the Accounts investing in the respective Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners.

3. The Participating Insurance Companies, CIGNA (or any other investment advisor of the Funds), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the ''Participants'') will report any potential or existing conflicts to the Board.[1] Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participant to inform the Board whenever voting instructions of Contract owners are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participants in the Funds under their agreements governing participation in the Funds. These responsibilities will be carried out with a view only to the interests of Contract owners.

4. If it is determined by a majority of the Board, or by a majority of its disinterested trustees or directors, that an irreconcilable material conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take any steps necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Accounts from the Funds and reinvesting such assets in a different investment medium including another portfolio of the relevant Fund or another Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners; and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners, variable life insurance contract owners, or variable contract owners of one or more of the Participants) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participant's decision to disregard voting instructions of the owners of the Contracts, and that decision represents a minority position or would preclude a majority vote, the Participant may be required, at the election of the relevant Fund, to withdraw its Account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participants under the agreement governing their participation in the Funds. The responsibility to take such remedial action shall be carried out with a view only to the interests of Contract owners. For purposes of this Condition Four, a majority of the disinterested members of the applicable Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the relevant Fund or CIGNA (or any other investment advisor of the Funds) be required to establish a new funding medium for any Contract. Further, no

[1] Applicants represent that, during the notice period, an amendment to the application will be filed and that such amendment will extend the obligation set forth in condition three to ''any other investment advisor of the Funds.''

Participant shall be required by this Condition Four to establish a new funding medium for any Contract if any offer to do so has been declined by a vote of a majority of the Contract owners materially affected by the material irreconcilable conflict.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly and in writing to all Participants.

6. Participants will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, the Participants, where applicable, will vote shares of the Fund held in their Accounts in a manner consistent with voting instructions timely received from Contract owners. Participants will be responsible for assuring that each of their Accounts that participates in the Fund calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges in a manner consistent with all other Accounts will be a contractual obligation of all Participants under the agreements governing their participation in the Funds. Each Participant will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions.

7. All reports received by the Board of potential or existing conflicts, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) Shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to qualified plans; [2] (b) due to differences of tax treatment and other considerations, the interests of various contract owners participating in the Funds and the interests of Plans investing in the Funds may conflict; and (c) the Board will monitor the Funds for any material conflicts and determine what action, if any, should be taken.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Funds), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, (although the Funds are not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, the Participants, and/or CIGNA, and/or its affiliates, shall submit to the Boards such reports, materials, or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials, and data to the Boards, when the appropriate Board so reasonably requests, shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

12. If a Plan becomes an owner of 10% or more of the assets of a Fund, such Plan will execute a fund participation agreement with the applicable Fund. A Plan will execute an investor's application containing an knowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30071 Filed 12–8–95; 8:45 am]

BILLING CODE 8010–01–M

[2] Applicants represent that an amendment to the application will be filed during the notice period, and that such amendment will include the representation regarding disclosure of the sale of shares of the Funds to qualified plans.

SMALL BUSINESS ADMINISTRATION

Specialized Small Business Investment Company (SSBIC) Advisory Council Public Meeting

The U.S. Small Business Administration, Investment Division (SSBIC) Advisory Council will hold a public meeting on Wednesday, December 13, 1995, at 9:00 a.m. The meeting will be held at the Law Office of Reid and Priest, 701 Pennsylvania Avenue, N.W., Eighth Floor, Washington Conference Room, Washington, D.C. This meeting was previously scheduled for Friday, November 17, 1995 but was cancelled due to the shutdown of the Federal government. The purpose of the meeting is to discuss matters as may be presented by Council members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Darryl K. Hairston, Deputy Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, S.W., Suite 6300, Washington, D.C. 20416 (202) 205–6510.

Dated: December 5, 1995.

Art DeCoursey,

Director, Office of Advisory Council.

[FR Doc. 95–30022 Filed 12–8–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice No. 2297]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 18, 1996 at 9:30 a.m. in Conference Room 1205, Department of State Building, 2201 C Street, N.W., Washington, D.C. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of

State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled and individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Ernest N. Mannino, Department of State, Office of Overseas Schools, SA–29, Room 245, Washington, D.C. 20522–2902, telephone 703–875–7800, prior to December 30, 1995. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: November 20, 1995.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 95–30015 Filed 12–8–95; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending December 1, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–870.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject:
PSC/Reso/083 dated November 17, 1995 r–1—r–51
PSC/Minutes/031 dated November 17, 1995
Necessary Government Action Date: no later than April 5, 1996
Intended effective date: June 1, 1996

Docket Number: OST–95–871.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject:
PSC/Reso/081 dated October 23, 1995 r–1—r–11
PSC/Reso/082 dated November 17, 1995 r–12—r–13
Expedited Resolutions/Recommended Practices (A summary is attached. Minutes, filed this date with the non-expedited resolutions, are contained in PSC/Minutes/031.)
Intended effective date: Dec. 1/Jan. 1/ Jan. 15/March 1, 1996

Docket Number: OST–95–872.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Mail Vote 760
Amend Mileage Manual
Intended effective date: December 1, 1995

Docket Number: OST–95–873.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Mail Vote 761
Amend Resolution 313
Intended effective date: December 15, 1995

Docket Number: OST–95–874.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject:
PAC/Reso/389 dated November 22, 1995
Expedited Resolutions, 18th PAConference
r–1–800t r–3–810 r–5–850d
r–2–800z r–4–826
Intended effective date: January 1/ April 1, 1996

Docket Number: OST–95–875.
Date filed: November 27, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC123 Reso/P 0128 dated October 13, 1995
North/Mid/South Atlantic Resolutions r–1–r–36
Intended effective date: March 1, 1995

Docket Number: OST–95–881.
Date filed: November 28, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC2 Reso/P 1831 dated November 14, 1995 r1–2
TC2 Reso/P 1832 dated November 14, 1995 r3–5
TC2 Reso/P 1833 dated November 14, 1995 r6–23
Europe-Africa Expedited Resos
Intended effective date: expedited December 31, 1995

Docket Number: OST–95–882.
Date filed: November 28, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC2 Reso/P 1834 dated November 14, 1995 r1
TC2 Reso/P 1835 dated November 14, 1995 r2
TC2 Reso/P 1836 dated November 14, 1995 r3–10
TC2 Reso/P 1837 dated November 14, 1995 r–11
TC2 Reso/P 1838 dated November 14, 1995 r–12–13
TC2 Reso/P 1839 dated November 14, 1995 r14–16
TC2 Reso/P 1840 dated November 14, 1995 r17–24
TC2 Reso/P 1841 dated November 14, 1995 r25–31
TC2 Reso/P 1849 dated November 14, 1995 r32–34
TC2 Reso/P 1850 dated November 14, 1995 r35–37
TC2 Reso/P 1851 dated November 14, 1995 r38–40
TC2 Reso/P 1852 dated November 14, 1995 r41–42
TC2 Reso/P 1853 dated November 14, 1995 r43–46
TC2 Reso/P 1854 dated November 14, 1995 r–47
TC2 Reso/P 1855 dated November 14, 1995 r48–r53
TC2 Reso/P 1856 dated November 14, 1995 r54–56
TC2 Reso/P 1857 dated November 14, 1995 r57–59
TC2 Reso/P 1858 dated November 14, 1995 r60–61
TC2 Reso/P 1859 dated November 14, 1995 r62–63
TC2 Reso/P 1860 dated November 14, 1995 r64–66
TC2 Reso/P 1861 dated November 14,1995 r67–68
Within Europe Expedited Resos
Intended effective date: various dates starting Jan. 16, 1996

Docket Number: OST–95–883.
Date filed: November 28, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC12 Reso/P 1698 dated October 31, 1995
Mexico-Europe Resos r—1—26
Intended effective date: April 1, 1996

Docket Number: OST–95–884.
Date filed: November 28, 1995.
Parties: Members of the International Air Transport Association.
Subject:
TC31 Reso/P 1089 dated November 10, 1995
Japan-North America/Caribbean Resos r1–13
Intended effective date: April 1, 1996

Docket Number: OST–95–885.
Date filed: November 28, 1995.

Parties: Members of the International Air Transport Association.

Subject:

TC31 Reso/P 1089 dated November 10, 1995

Japan-North America/Caribbean Resos r1–13

Necessary Government Action Date: no later than February 10, 1996

Intended effective date: April 1, 1996

Docket Number: OST–95–892.

Date filed: November 30, 1995.

Parties: Members of the International Air Transport Association.

Subject:

TC12 Reso/P 1704 dated November 7, 1995 r1–12

TC12 Reso/P 1705 dated November 7, 1995 r13–23

TC12 Reso/P 1706 dated November 7, 1995 r24–39

North/Mid/South Atlantic-Africa resos

Intended effective date: April 1, 1996

Necessary Government Action Date: no later than February 1, 1996

Docket Number: OST–95–893.

Date filed: November 30, 1995.

Parties: Members of the International Air Transport Association.

Subject:

TC2 Reso/P 1829 dated November 10, 1995

Within Africa Resos r1–22

Intended effective date: April 1, 1996

Necessary Government Action Date: no later than February 1, 1996

Docket Number: OST–95–894.

Date filed: November 30, 1995.

Parties: Members of the International Air Transport Association.

Subject:

COMP Telex Mail Vote 762

Amend Mileage Manual

Intended effective date: January 1, 1996

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95–30043 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 1, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–869.

Date filed: November 24, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 22, 1995.

Description: Application of Continental Micronesia, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a five-year renewal of its Route 171 certificate authority to provide scheduled foreign air transportation of persons, property and mail between Guam and Tokyo, Japan.

Docket Number: OST–95–886.

Date filed: November 29, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 27, 1995.

Description: Application of Coastal Jet, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing interstate, foreign, and charter air transportation within the Continental U.S., Canada, the Caribbean, Central and South America.

Docket Number: OST–95–891.

Date filed: November 30, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 28, 1995.

Description: Application of Jetall Airways, Inc. pursuant to 49 U.S.C. Section 41302, applies for a foreign air carrier permit to provide nonscheduled foreign air transportation of property and mail under charter between a point or points in Canada, on the one hand, and a point or points in the United States, on the other hand.

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95–30042 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rhinelander-Oneida County Airport, Rhinelander, Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rhinelander-Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 10, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Joseph J. Brauer, Airport Manager, of the Rhinelander-Oneida County Airport at the following address: Rhinelander-Oneida County Airport, 3375 Airport Road, Rhinelander, WI 54507–9178.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rhinelander-Oneida County Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, (612) 725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rhinelander-Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 28, 1995 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Rhinelander-Oneida County Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 5, 1996.

The following is a brief overview of the application.

PFC application number: 96–03–C–00–RHI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1996.

Proposed charge expiration date: July 31, 2000.

Total estimated PFC revenue: $332,000.

Brief description of proposed project(s):

PROJECTS TO IMPOSE AND USE: Acquire Snow Removal Equipment, Update Airport Master Plan, Interactive Training Equipment, PFC Administration, Groove and Mark Runway 9/27.

IMPOSE-ONLY PROJECT: Terminal Building Improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air.

Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rhinelander-Oneida County Airport.

Issued in Des Plaines, Illinois on December 4, 1995.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–30100 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Jaguar

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

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Jaguar Cars Limited (Jaguar) for an exemption of a high-theft line (whose nameplate is confidential) from the parts-marking requirements of the vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms Gray's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: On July 31, 1995, Jaguar Cars, on behalf of Jaguar Cars Limited, submitted to NHTSA a petition for exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for a motor vehicle line. The nameplate of the line and the model year of introduction are confidential. The petition has been filed pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Jaguar's submittal is considered a complete petition, as required by 49 CFR Part 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter to Jaguar dated August 18, 1995, the agency granted the petitioner's request for confidential treatment of most aspects of its petition, including the nameplate of the line and the model year of its introduction.

In its petition, Jaguar provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine starter interrupt function and an alarm function. The antitheft device is activated by operating a radio frequency (''RF'') transmitter or by removing the ignition key and locking the doors with it.

In order to ensure reliability and durability of the device, Jaguar stated that it conducted tests for performance under conditions of vibration, humidity, and temperature extremes, as well as for endurance, flammability, resistance to fluids, thermal shock, RFC and EMC, and overall performance. Jaguar stated its belief that the device is reliable and durable since the device complied with Jaguar's specified requirements for each test.

Jaguar also compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541, and has concluded that the antitheft device proposed for this new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements.

Jaguar bases its belief on the ease of use of the antitheft system it is proposing for the new car line. In addition, it points out that other Jaguar models, which are all parts-marked, all have theft rates below the median theft rate according to NHTSA's vehicle theft data published on November 29, 1994 (59 FR 61023). Other aspects of the system cited by Jaguar as reasons why it should be as effective as parts-marking are the shielding of the driver's door lock barrel to prevent opening by ''Slim-Jims'' and other tools; the location of the hood latch control; location of the battery, which is protected by the security system; the capability of the alarm to function when the battery has been reconnected after having been disconnected; and a flashing LED and warning labels that advise unauthorized persons that the vehicle is protected by a security system. Jaguar believes that the theft rate for this vehicle line equipped with this antitheft device as standard equipment will be below the most recent median theft rate of 3.5826 published by NHTSA.

Based on evidence submitted by Jaguar, the agency believes that the antitheft device for the new Jaguar line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standards (49 CFR Part 541).

The agency believes that the device will provide the types of performance listed in 49 CFR Part 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6(a)(4) and (5), the agency finds that Jaguar has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Jaguar provided about its device, much of which is confidential. This confidential information included a description of reliability and functional tests conducted by Jaguar for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full Jaguar's petition for exemption for vehicle line (confidential) from the parts-marking requirements of 49 CFR Part 541.

If Jaguar decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Jaguar wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.'' The agency wishes to minimize the administrative burden with Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: December 6, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–30101 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 95–94; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1991 BMW 735IL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 BMW 735IL passenger cares are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1991 BMW 735IL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for importation into and for sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 10, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109. National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA had decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and for sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1991 BMW 735IL passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 BMW 735IL that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Bayerische Motoren Werke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 BMW 735IL to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 BMW 735IL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 BMW 735IL is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Acclerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1991 BMW 735IL complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d)

installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side convex rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag with a U.S.-model component; (d) installation of a U.S.-model knee bolster on the driver's side to augment the automatic restraint system. The petitioner states that the vehicle is equipped in each front designated seating position with a combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button. The petitioner further states that the vehicle is equipped in each outboard rear designated seating position with a combination lap and shoulder restraint that releases by means of a single push button, and with a lap belt in its rear center seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–30033 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection Activity; Public Comment Request: Application for Accreditation as Service Organization Representative, VA Form 21; and Appointment of Attorney or Agent as Claimant's Representative, VA Form 22a

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Office of General Counsel (OGC) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than February 9, 1996.

ADDRESSES: Direct all written comments to Harold (Butch) Miller, Office of General Counsel (026A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the OGC request for Office of Management and Budget (OMB) approval. In this document OGC is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0018.

Title and Form Number: Application for Accreditation as Service Organization Representative, VA Form 21; and Appointment of Attorney or Agent as Claimant's Representative, VA Form 22a.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses: The forms are used to appoint a service organization, attorney or agent as a representative in claims for VA benefits.

Current Circumstances: VA Form 21 will be evaluated by Office of General Counsel to determine qualification for accreditation and the need for cautionary instructions concerning conflict of interest. Applicants meeting the regulatory standards are issued an ID card allowing them access to VA files of claimants who have designated the service organization with which they are affiliated as claims representative and are issued a letter setting forth their responsibilities. Those denied accreditation, and their organizations, are informed of the reason for the denial. If the information were not collected, VA would have no way of evaluating applicants for accreditation under the requirements of 38 CFR 14.629.

VA Form 22a will be reviewed by VA's Veterans Benefits Administration. The information on the form will be used to ascertain the identity of the representative appointed by the claimant to represent him or her and the scope of the representative's authority to inspect records. This information is necessary for determining whether access to claimant records may be provided and for notification purposes. If the information were not collected, VA could not recognize the representative as the attorney or agent of the claimant under applicable statutes and regulations and could not provide access to claimant records.

Affected Public: Individuals and households, Not-for-profit institutions and State, Local or Tribal Government.

Estimated Annual Burden: 1,650 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,600.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to

Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 565–4412 or FAX (202) 565–8267.

Dated: November 30, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–30010 Filed 12–8–95; 8:45 am]

BILLING CODE 8320–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 237
Monday, December 11, 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 ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

DATE AND TIME: December 13, 1995 10:00 a.m.

PLACE: 888 First Street, N.E., Room 2C, Washington D.C. 20426

STATUS: Open

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400 for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 643rd Meeting—December 13, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Docket# P–2725, 040, Oglethorpe Power Corporation
CAH–2.
Docket# P–6901, 039, City of New Martinsville, West Virginia
CAH–3.
Docket# P–11402, 001, City of Crystal Falls, Michigan
CAH–4.
Docket# P–10867, 002, Holliday Historic Restoration Associates, LTD.
CAH–5.
Docket# P–1267, 000, Greenwood County, South Carolina
CAH–6.
Docket# P–2406, 002, Duke Power Company
CAH–7.
Docket# P–2465, 003, Duke Power Company
CAH–8.
Docket# P–2486, 002, Wisconsin Electric Power Company
CAH–9.
Docket# P–2643, 001, Pacificorp Electric Operations
CAH–10.
Docket# P–7174, 023, Truman Price, Inc.

Consent Agenda—Electric

CAE–1.
Docket# ER95–1625, 000, USGEN Power Services L.P.
CAE–2.
Docket# ER95–1139, 000, Carolina Power & Light Company
CAE–3.
Docket# ER96–108, 000, Duke/Louis Dreyfus L.L.C.
Other#s ER95–760 000, Duke Power Company
ER96–109 000, Duke Energy Marketing Corporation
ER96–110 000, Duke Power Company
CAE–4.
Docket# ER96–71, 000, Pacificorp
CAE–5.
Docket# ER94–1518, 000, Commonwealth Electric company
CAE–6.
Docket# ER95–1104, 000, Cleveland Electric Illuminating Company and the Toledo Edison Company
Other#s EC94–14, 000, Cleveland Electric Illuminating Company and the Toledo Edison Company
CAE–7.
Docket# FA91–65, 001, Kentucky Utilities Company
CAE–8.
Docket# ER94–108, 006, Heartland Energy Services, Inc.
Other#s ER94–475, 006, Wisconsin Power and Light Company
CAE–9.
Docket# ER95–1268, 001, Public Service Company of Colorado
CAE–10.
Docket# ER95–1545, 001, Commonwealth Edison Company
Other#s ER93–777, 005, Commonwealth Edison Company
ER95–371, 006, Commonwealth Edison Company
ER95–1539, 001, Commonwealth Edison Company
CAE–11.
Docket# TX93–4, 002, Florida Municipal Power Agency v. Florida Power & Light Company
Other#s EL93–51, 001, Florida Municipal Power Agency v. Florida Power & Light Company
CAE–12.
Docket# EL95–35, 001, Kootenai Electric Cooperative, Inc. et al. v. Public Utility District No. 2 of Grant County, Washington
CAE–13.
Docket# ER95–1230, 001, Niagara Mohawk Power Corporation
Other#s ER94–478, 002, Medina Power Company
CAE–14.
Docket# EL94–59, 001, City of Bedford, et al., Town of Richlands Virginia and Blue Ridge Power Agency v. Appalachian Power Company
CAE–15.
Docket# ER95–1543, 002, Illinois Power Company
Other#s EL96–20, 000, Illinois Power Company
ER95–764 003 Illinois Power Company
CAE–16.
Docket# TX93–2, 005, Cities of Bedford, Danville and Martinsville Virginia, Town of Richlands, and Blue Ridge Power Agency
CAE–17.
Docket# EL92–33, 003, Citizens Utilities Company
Other#s EL92–33, 001, Barton Village, Inc., Village of Enosburg Falls Water & Light Department, et al., v. Citizens Utilities Company
EL95–10, 000, Central Vermont Public Service Corporation v. Citizens Utilities Company
ER94–1209, 001, Citizens Utilities Company
ER94–1210, 001, Citizens Utilities Company
CAE–18.
Docket# EL95–36, 001, Jersey Central Power & Light Company
CAE–19.
Docket# EG96–14, 000, Mid Georgia Cogen L.P.
CAE–20.
Docket# EG96–16, 000, West Allegheny Biomass Energy Corporation
CAE–21.
Docket# EG96–17, 000, Kraftwerk Schkopau GBR
CAE–22.
Docket# EG96–18, 000, Kraftwerk Schkopau Betriebsgesellschaft MBH
CAE–23.
Docket# EG96–13, 000, NYC Energy group, L.P.
CAE–24.
Docket# EG96–10, 000, Northwest power company, LLC
CAE–25.
Docket# EG96–11, 000, CSW Development–3, Inc.
CAE–26.
Docket# EG96–19, 000, Kingston Cogen Limited Partnership
CAE–27.
Omitted
CAE–28.
Docket# EL91–43, 000, Southern Minnesota Municipal Power Agency v. Northern States Power Company (Minnesota)
CAE–29.
Omitted
CAE–30.
Docket# EL95–40, 000, Megan-Racine Associates, Inc.
Other#s EL95–47, 000, Megan-Racine Associates, Inc.
QF89–58, 001, Megan-Racine Associates, Inc.

QF89–58, 002, Megan-Racine Associates, Inc.
CAE–31.
Docket# ER95–1536, 001, Florida Power Corporation
Other#s ER95–634, 002, Florida Power Corporation

Consent Agenda—Miscellaneous

CAM–1.
Docket# RM95–1, 000, Supplemental Standards of Ethical Conduct for Employees of the Federal Energy Regulatory Commission

Consent Agenda—Gas and Oil

CAG–1.
Omitted
CAG–2.
Docket# RP96–5, 001, Carnegie Interstate Pipeline Company
CAG–3.
Docket# RP96–44, 000, Transcontinental Gas Pipe Line Corporation
CAG–4.
Omitted
CAG–5.
Omitted
CAG–6.
Docket# PR95–16, 000, Olypmic Pipeline Company
Other#s PR95–17, 000, Olypmic Pipeline Company
CAG–7.
Docket# CP88–391, 016, Transcontinental Gas Pipe Line Corporation
Other#s CP88–391, 017, Transcontinental Gas Pipe Line Corporation
CAG–8.
Docket# PR95–11, 000, Egan Hub Partners, L.P.
CAG–9.
Docket# RP95–112, 011, Tennessee Gas Pipeline Company
CAG–10.
Docket# RP96–39, 000, Cove Point LNG Limited Partnership
CAG–11.
Docket# RP96–48, 000, ANR Pipeline Company
CAG–12.
Omitted
CAG–13.
Docket# RP95–409, 001, Northwest Pipeline Corporation
CAG–14.
Docket# RP96–43, 000, Pacific Gas Transmission Company
CAG–15.
Docket# RP94–120, 008, Koch Gateway Pipeline Company
CAG–16.
Docket# RP92–74, 011, South Georgia Natural Gas Company
CAG–17.
Docket# RP95–103, 000, Florida Gas Transmission Company
CAG–18.
Docket# RP94–227, 003, Transwestern Pipeline Company
CAG–19.
Docket# RP95–185, 010, Northern Natural Gas Company
CAG–20.
Docket# RP95–451, 001, Tennessee Gas Pipeline Company
CAG–21.
Docket# TM96–2–22, 001, CNG Transmission Corporation
CAG–22.
Docket# RP94–296, 007, Williams Natural Gas Company
CAG–23.
Docket# RP95–374, 002, Gas Research Institute
CAG–24.
Omitted
CAG–25.
Docket# RP95–296, 001, Williams Natural Gas Company
CAG–26.
Docket# RP95–429, 001, ANR Pipeline Company
Other#s
RP95–180, 001, ANR Pipeline Company
RP95–181, 002 ANR Pipeline Company
RP95–315, 001 ANR Pipeline Company
CAG–27.
Omitted
CAG–28.
Docket# RP95–364, 002, Williston Basin Interstate Pipeline Company
CAG–29.
Docket# TM94–5–49, 003, Williston Basin Interstate Pipeline Company
Other#s
TM95–4–49, 003, Williston Basin Interstate Pipeline Company
CAG–30.
Docket# RP94–164, 008, Trunkline Gas Company
Other#s AC94–49, 002, Trunkline Gas Company
CP92–498, 006, Trunkline Gas Company
RP94–164, 007, Trunkline Gas Company
RP94–374, 002, Trunkline Gas Company
RP95–19, 002, Trunkline Gas Company
CAG–31.
Docket# RP91–166, 029, Northwest Pipeline Corporation
Other#s RP91–166, 028, Northwest Pipeline Corporation
CAG–32.
Docket# RP87–103, 016, Panhandle Eastern Pipe Line Company
CAG–33.
Docket# RP95–197, 006, Transcontinental Gas Pipe line Corporation
CAG–34.
Docket# OR95–7, 000, Longhorn Partners Pipeline
CAG–35.
Docket# CP88–760, 020, Transcontinental Gas Pipe line Corporation
CAG–36.
Docket# CP95–177, 001, Burton McDaniel, M.D. v. East Tennessee Natural Gas Company
CAG–37.
Docket# CP95–681, 001, Texas Eastern Transmission Corporation
CAG–38.
Docket# CP95–724, 001, Transcontinental Gas Pipe line Corporation
CAG–39.
Docket# CP93–258, 007, Mojave Pipeline Company
CAG–40.
Docket# CP93–613, 003, Northwest Pipeline Corporation
Other#s CP93–613, 004, Northwest Pipeline Corporation
CP93–673, 003, Northwest Pipeline Corporation
CP93–673, 004, Northwest Pipeline Corporation
RP95–413, 000, Northwest Pipeline Corporation
CAG–41.
Omitted
CAG–42.
Docket# CP94–575, 002, El Paso Natural Gas Company
CAG–43.
Docket# CP94–775, 002, Tennessee Gas Pipeline Company
CAG–44.
Docket# CP95–304, 001, Shell Western E&P Inc.
CAG–45.
Docket# CP66–111, 003, Great Lakes Gas Transmission Limited Partnership
Other#s CP96–26, 000, Great Lakes Gas Transmission Limited Partnership
CAG–46.
Docket# CP93–618, 004, Pacific Gas Transmission Company
CAG–47.
Docket# CP95–314, 000, East Tennessee Natural Gas Company
CAG–48.
Docket# CP95–581, 000, Midwestern Gas Transmission Company and Trunkline Gas Company
CAG–49.
Docket# CP93–566, 000, ANR Pipeline Company
Other#s CP93–564, 000, ANR Pipeline Company
CP93–564, 001, ANR Pipeline Company
CP93–564, 002, ANR Pipeline Company
CP93–564, 003, ANR Pipeline Company
CP93–566, 001, ANR Pipeline Company
CP93–566, 002, ANR Pipeline Company
CAG–50.
Docket# CP95–784, 000, Mountain Fuel Supply Company v. Prima Exploration, Inc., BTA Oil Producers and NGC Energy Resources, et al.
CAG–51.
Docket# CP95–22, 000, Anadarko Gathering Company
Other#s CP95–21, 000, Panhandle Eastern Pipe Line Company
CP95–23, 000, Panhandle Field Services Company
CAG–52.
Docket# RP95–212, 001, Kansok Partnership, Kansas Pipeline Partnership and Riverside Pipeline Company, L.P.
Other#s RP95–395, 001, Williams Natural Gas Company v. Kansas Pipeline Operating Company and Kansas Pipeline Partnership, et al.
CAG–53.
Docket# RP95–364, 001, Williston Basin Interstate Pipeline Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket# RM95–9, 000, Real-Time Information Networks and Standards of Conduct—Notice of Proposed Rulemaking.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: December 6, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30199 Filed 12–7–95; 12:39 pm]

BILLING CODE 6717–01–p

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, December 14, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995–42: Jim McCrery on behalf of McCrery for Congress
Adminstrative Matters

DATE AND TIME: Thursday, December 14, 1995 will convene following the Open Meeting.

PLACE: 999 E Street NW., Washington, DC.

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

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–30264 Filed 12–7–95; 2:42 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m. Wednesday, December 13, 1995.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Second Round 1995 AHP Applications Approval for the FHLBanks of Boston, New York, Cincinnati, Chicago, Des Moines, Dallas, Topeka, San Francisco and Seattle
- Approval of AHP District Priorities
- Approval of an AHP Award for First Union National Bank of Georgia
- Review of Finance Board Policy for Directors Fees and Expenses
- Appointment of FHLBank Public Interest Directors
- Appointment of FHLBank Chairs
- Repeal of Finance Board Regulation on Charitable Donations by the FHLBanks

MATTER TO BE CONSIDERED DURING PORTIONS CLOSED TO THE PUBLIC:

- FHLBank of San Francisco Affordable Housing Subsidies on Guaranteed Rate Advances

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–30211 Filed 12–7–95; 12:41 pm]

BILLING CODE 6725–01–P

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on December 18, 1995. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board may be briefed by management on internal operational and personnel matters. In addition, the General Counsel will report to the Board on litigation to which the Corporation is or may become a party and the Board may act on the matters reported. Finally, the Board may be briefed by the Inspector General on activities of the Office of Inspector General.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. section 552b(c)(10)] and the corresponding regulation of the Legal Services Corporation [45 C.F.R. section 1622.5(h)]. A copy of the General Counsel's certification that the closing is authorized by law will be posted for public inspection at the Corporation's headquarters, located at 750 First Street NE, Washington, DC 20002, in its 11th floor reception area, and will otherwise be available upon request.

[1] Briefings do not constitute ''meetings'' as defined by the Government in the Sunshine Act. Notice of the briefings is here provided as a courtesy to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of October 6, 1995, meeting.
3. Approval of Minutes of October 6, 1995, Executive Session.
4. Election of Corporate Secretary.
5. Chairman's and Member's Reports.
6. President's Report on Status of Reauthorization for LSC and LSC's FY '96 Appropriations.
7. Inspector General's Report.
8. Consider and act on Board's Operations and Regulations Committee report on:
   a. Proposed Regulation restricting LSC-funded representation in certain eviction proceedings.
   b. Proposed Regulation requiring timekeeping by LSC grantees.
   c. Proposed Regulation governing competitive bidding of LSC grants.
9. Consider and act on the report of the Board's Finance Committee.
10. Consider and act on the report of the Board's Committee on the Provision for the Delivery of Legal Services.
11. Announcement of action taken by notational vote on draft Board Response to the Office of Inspector General's Semiannual Report to Congress for the Period of April 1, 1995–September 30, 1995.

Closed Session

12. Report of the Board's Special Litigation Committee.
13. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.
14. Inspector General's briefing of the Board on activities of LSC's Office of Inspector General.
15. Management's briefing of the Board on internal operations and personnel matters.

Open Session

16. Public comment.
17. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting should contact Barbara Asante, at (202) 336–8800.

Dated: December 7, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–30265 Filed 12–7–95; 2:43 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation's Board of Directors will meet on December 17, 1995. The meeting will begin at 1:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of September 8–9, 1995, Joint Meeting of the Operations and Regulations Committee and the Provision for the Delivery of Legal Services Committee.
3. Consider proposed regulation restricting representation in certain eviction proceedings and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
4. Consider proposed regulation requiring timekeeping by LSC grantees and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
5. Consider proposed regulation governing competitive bidding of grants and contracts and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
6. Report from management on the operations implications of prospective reductions in funding for management and administration of the Corporation.
7. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: December 7, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–30266 Filed 12–7–95; 2:43 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation's Committee on Provision for the Delivery of Legal Services will meet on December 17, 1995. The meeting will commence at 1:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda.
2. Approval of Minutes of September 8–9, 1995, Joint Meeting of the Operations and Regulations Committee and the Provision for the Delivery of Legal Services Committee.
3. Staff report on conversion of Corporation's grant-making system to one of competitive bidding and the current status of grantmaking by the Corporation.
4. Consider and act on recommendations to make to the Board concerning funding policies pursuant to FY '96 LSC appropriation for promulgation of national priorities that grantees may use in settling local priorities.
5. Staff report on possible changes in how compliance and enforcement are handled by the Corporation.
6. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: December 7, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–30267 Filed 12–7–95; 2:43 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation's Board of Directors will meet on December 17, 1995. The meeting will begin at 1:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of the Committee's meeting of October 6, 1995.
3. Staff report on expenses.
4. Develop a Consolidated Operating Budget to recommend to the Board.
5. Develop a Budget Request to Congress for FY '97 to recommend to the Board.
6. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: December 7, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–30268 Filed 12–7–95; 2:43 pm]

BILLING CODE 7050–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 10:00 a.m., Thursday, December 14, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Community Development Revolving Loan Program for Credit Unions: Notice of Applications for Participation.
3. Central Liquidity Facility Agent Reimbursement for 1996.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Thursday, December 14, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 205 of the FCU Act and Part 708 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
3. Administrative Action under Section 109 of the Federal Credit Union Act. Closed pursuant to exemption (8).
4. Administrative Actions under Part 745 of NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).
5. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
6. Personnel Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–30269 Filed 12–7–95; 2:44 pm]

BILLING CODE 7535–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1481]

TIME AND DATE: 10 a.m. (EST), December 13, 1995.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on October 18, 1995.

New Business

A—Budget and Financing

A1. Adoption of Tennessee Valley Authority Financial Statements for Fiscal Year 1995.

A2. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 1996, Pursuant to Section 26 of the TVA Act.

C—Energy

C1. Contract with Sargent & Lundy for engineering and design services related to TVA's generating plant switchyards, electrical transmission system, and power control communication facilities.

C2. Contracts with GLI Technical Services, Inc., Plant Technical Services, Inc., and TAD Resources International, Inc., to provide temporary professional and technical support services.

E—Real Property

E1. Land exchange by the State of Tennessee involving 0.30 acre of former TVA land on Chickamauga Lake in McMinn County, Tennessee (Tract No. XTCR–101).

E2. Sale by the United States Department of Agriculture, Forest Service, involving 1.24 acres of former TVA land on Fontana Lake in Swain County, North Carolina (Tract No. XTFR–3).

E3. Grant of permanent easement to the State of Alabama for highway improvements affecting approximately 1.33 acres of land on Guntersville Lake in Marshall County, Alabama (Tract No. XTGR–161H).

E4. Sale of five noncommercial, nonexclusive permanent recreation easements affecting a total of 0.80 acre of Tellico Lake shoreline in Loudon and Monroe Counties, Tennessee (Tract Nos. XTELR–171RE, XTELR–174RE, XTELR–177RE, XTELR–178RE, and XTELR–179RE).

E5. Deed modification to allow Big Bear Resort to construct and sell condominiums on an additional portion of the tract comprising approximately 1.25 acres of former TVA land on Kentucky Lake in Marshall County, Kentucky (Tract No. XGIR–125).

6. Wheeler Reservoir Land Management Plan establishing management strategies and identifying the most suitable uses for 11,284 acres of public land owned and managed by TVA on Wheeler Reservoir.

F—Information Items

1. Supplement No. 14 to Contract No. TV–85454V–1 with Stone & Webster Engineering Corporation for continuation of engineering services at Sequoyah Nuclear Plant.

2. Approval of Fiscal Year 1996 Operating Budget and Power System Capital Budget.

3. Supplement to Contract No. TV–90562V with The Hartford Steam Boiler Inspection and Insurance Company.

4. Abandonment of easement rights over portions of the East Cleveland Primary-Oglethorpe Primary Transmission Line right-of-way in Hamilton County, Tennessee, and Catoosa County, Georgia (Tract No. COCL–18 and portions of Tract Nos. COCL–17, −18A, and −19).

5. Implementation of the decisions of the Secretary of Labor in the wage disputes between TVA and the International Brotherhood of Electrical Workers for 1993, 1994, and 1995.

6. Appointment of J. Wayne Owens as Assistant Secretary of TVA.

FOR MORE INFORMATION: Please call TVA Public Relations at (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999

Dated: December 6, 1995.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 95–30210 Filed 12–7–95; 8:45 am]

BILLING CODE 8120–08–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, December 13, 1995 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

Children's Sleepwear

The Commission will consider whether to issue final amendments of the children's sleepwear flammability standards to exempt tight fitting sleepwear garments and sleepwear garments intended for children younger than six months of age.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–30270 Filed 12–7–95; 2:45 pm]

BILLING CODE 6355–01–M

Corrections

Federal Register
Vol. 60, No. 238
Tuesday, December 12, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

Correction

In rule document 95–29527 beginning on page 62702 in the issue of Thursday, December 7, 1995, make the following correction:

On page 62702, in the third column, under **EFFECTIVE DATE**, in the first line, insert ''January 8, 1996.'' before ''See''.

BILLING CODE 1505–01–D

APPALACHIAN REGIONAL COMMISSION

5 CFR Part 1900

Repeal of Employee Responsibilities and Conduct Regulations for Appalachian Regional Commission Federal Employees (Federal Staff)

Correction

In rule document 95–29884 appearing on page 62702 in the issue of Thursday, December 7, 1995, make the following correction:

§ 1900.100 [Corrected]

On page 62702, in the third column, the heading for § 1900.100 should read as set forth below.

§ 1900.100 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In notice document 95–28452 beginning on page 57573 in the issue of Thursday, November 16, 1995, make the following correction:

On page 57574, in the table, in the entry for Brazil, in the second column, the dates should read ''01/01/94-12/31/94''.

BILLING CODE 1505–01–D

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of the National Senior Service Corps' Project Profile and Volunteer Activity (PPVA) Information Collection Instruments

Correction

In notice document 95–29475 appearing on page 62078 in the issue of Monday, December 4, 1995, in the third column, under **DATES**, beginning with the fifth line, ''within 60 days from the date of publication'' should read ''on or before February 2, 1996''.

BILLING CODE 1505–01–D

Federal Register

Monday
December 11, 1995

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 803, et al.
Medical Device User Facility and Manufacturer Reporting, Certification and Registration; Delegations of Authority; Medical Device Reporting Procedures; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 807

[Docket No. 91N–0295]

RIN 0910–AA09

Medical Devices; Medical Device User Facility and Manufacturer Reporting, Certification and Registration

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; opportunity for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations requiring medical device user facilities and manufacturers to report adverse events, related to medical devices, under a uniform reporting system. This regulation is mandated by the Safe Medical Devices Act of 1990 (SMDA) and prescribes the conditions under which reports must be submitted, the content and timing of the requisite reports, and how FDA will utilize the information in carrying out its public health protection responsibilities. This rule is intended to augment the agency's postmarket surveillance activities and public health protection responsibilities relating to medical devices.

In the future, FDA will propose to revoke the distributor adverse event reporting regulations that went into effect on May 28, 1992, by operation of law and replace them with provisions based on notice and comment. FDA will also propose to fully implement its authority under the Medical Device Amendments of 1992 (the 1992 amendments).

DATES: This final rule is effective April 11, 1996. Submit written comments, as requested elsewhere in this document by, January 10, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Earl W. Robinson, Center for Devices and Radiological Health (HFZ-530), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2735.

SUPPLEMENTARY INFORMATION: On November 26, 1991 (56 FR 60024), FDA published a tentative final rule implementing the user and distributor reporting provisions of the SMDA (hereinafter referred to as the November 1991 tentative final rule). The agency received over 300 comments in response to the tentative final rule, which are carefully evaluated and responded to in this final rule. The final rule also reflects the superseding reporting standard mandated by the Medical Device Amendments of 1992.

I. Highlights of the Final Rule

This final rule provides FDA with increased post-market surveillance information by requiring medical device user facilities and manufacturers to report adverse event information as follows:

(a) Medical device user facilities must submit a medical device report (MDR) to the device manufacturer within 10 days after becoming aware of a reportable death or serious injury (including serious illness). If the event involves a device-related death, or if the identity of the device manufacturer is not known, the report must be sent to FDA. User facilities must also submit a semiannual summary of reports to FDA.

(b) Device manufacturers must submit MDR reports to FDA within 30 days after becoming aware of a reportable death, serious injury, or malfunction.

(c) Device manufacturers must annually certify the number of MDR reports filed with FDA during the preceding year.

(d) Upon receiving information about an MDR reportable event, device manufacturers must submit a ''5-day report'' to FDA, within 5 work days of: (1) Becoming aware that a reportable event or events, from any information, including any trend analysis, necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health; or (2) becoming aware of an MDR reportable event from which FDA has made a written request for the submission of a 5-day report.

(e) A device manufacturer is responsible for reporting MDR events related to its devices, whether or not the devices are still being marketed by the firm. If a manufacturer receives information about an event involving a device incorrectly identified as one marketed by that firm, the information received must still be forwarded to FDA, with an explanation that the device was misidentified.

In finalizing this regulation, FDA has worked to meet the significant challenges of devising an effective medical device adverse event reporting system while balancing industry concerns with public health needs and statutory imperatives. The agency has also taken steps to minimize the administrative costs and paperwork burdens that will inevitably result for FDA, the medical device industry, and the device user community. FDA is keenly aware of and sensitive to the impacts of these new regulatory requirements on the pace of technological advancement and economic well-being of the medical device industry. At the same time, the agency is cognizant of the usefulness of information about the clinical performance of medical devices in fulfilling its public health mandate.

In striving to achieve regulatory balance, the agency carefully analyzed over 300 public comments submitted in response to the November 1991 tentative final rule, and resolved policy and legal issues arising from the comments and internal deliberations. This review of comments, combined with an economic threshold analysis, and other agency studies and deliberations, resulted in a number of major modifications that will facilitate compliance with the final reporting requirements and substantially reduce the overall costs, by an estimated $31 million, borne by device user facilities, the device industry, and the agency. These modifications are as follows:

(a) The agency has eliminated certain criteria from the previously proposed manufacturer monthly reports including: An evaluation consisting of a narrative description of the results of statistical trend analyses conducted by the manufacturer, a discussion of the underlying methodologies used, a description of any unusual or unexpected events, and a description of any remedial actions taken.

FDA believes that the benefits of the proposed mandatory trend analyses were not commensurate with the attendant costs to industry. Upon further review, the agency has determined that it would incur the costs of data entry regardless of the industry's analysis, and operating a computer program for the analysis of the data would be a relatively low cost to the agency. The proposed requirements for other information that the final regulation is not adopting will still be made available to the agency under the existing current good manufacturing practice (CGMP) regulations (21 CFR part 820), and under proposed 21 CFR part 806, reports of removals and corrections (59 FR 13828, March 23, 1994).

(b) The final regulation's reporting timeframe is shorter than the timeframe proposed. Earlier access to adverse event information will help the agency better to protect the public health.

(c) The agency has eliminated the proposed training and educational requirements, which would have been particularly costly to user facilities,

because the projected costs substantially exceeded expected benefits. This change will provide a net estimated annual cost saving of $29.1 million.

(d) The proposed imminent hazard report deadline has been extended from 3 days to 5 days, and renamed a 5-day report. This extended reporting timeframe should provide a more realistic opportunity for the manufacturer to conduct a preliminary investigation regarding the event. Any information not available for submission on the 5-day report must be submitted in a supplemental report.

(e) The agency has developed reporting forms for baseline reports, semiannual reports, and annual certifications. This action will streamline the reporting procedure because industry will not be required to format its own reports. The standardized report forms and associated standardized electronic reporting formats will facilitate the input of information submitted into FDA's data base. This more efficient data processing will increase the agency's capacity to respond to critical device- related problems by permitting more rapid data analysis, leading to appropriate corrective measures.

(f) The agency has adapted its MDR systems and reporting requirements in order to use the MEDWATCH form for reporting individual adverse events. In so doing, FDA has eliminated a number of proposed reporting elements, including the ''degree of certainty'' associated with a reportable event, the ''medical status of patients'' involved in device-related incidents, product ''service and maintenance,'' etc. The adoption of the MEDWATCH reporting form streamlines the reporting process and reduces the amount of information reporters must submit to FDA.

(g) The agency has clarified that user facilities must report only information that is reasonably known to them, and are not required to investigate adverse events.

(h) The agency has devoted much time and effort to accommodate electronic reporting. The agency is in the process of developing formats, guidelines, and procedures for electronic reports which, when available, will obviate the need for written agency approval for the use of electronic submissions.

(i) In response to comments, the agency has clarified a number of the definitions included in the proposed rule and added new definitions to enhance clarity. The agency also substantially altered the organization and the paragraph designations of the final rule to provide information in the clearest and most usable form in part 803 (21 CFR part 803).

Revised part 803 has been subdivided into five subparts. Subpart A contains general provisions including sections for the scope, definitions, public availability of reports, and general reporting and record requirements.

Subpart B of revised part 803 contains generally applicable reporting requirements for individual adverse event reports. Specific requirements for individual adverse event reports, and other reports required by user facilities and manufacturers, are in subparts C and E, respectively. Each subpart divides the reporting requirements for each type of reporting entity into separate sections that are organized to improve readability. The agency believes that the new organization of the regulation provides clearer guidance to industry than the 1991 tentative final rule.

II. Background

Under the Federal Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. 301–394) (the act), and the Medical Device Amendments of 1976 (Pub. L. 94–295) (the 1976 amendments), FDA issued medical device reporting regulations for manufacturers (49 FR 36326 at 36348, September 14, 1984). To correct weaknesses noted in the 1976 amendments, and to better protect the public health by increasing reports of device-related adverse events, Congress enacted the SMDA (Pub. L. 101–629), which required medical device user facilities, and distributors to report certain device-related adverse events. In response to a directive in the SMDA, FDA issued the November 1991 tentative final rule proposing to implement regulations concerning reporting of adverse events related to devices by user facilities and distributors. In the November 1991 tentative final rule, FDA also proposed to amend the existing manufacturer reporting regulations to conform to the proposed user facility and distributor reporting requirements.

A. User Facility, Manufacturer and Distributor Reporting Requirements Under the SMDA

The SMDA added section 519(b)(1) to the act (21 U.S.C. 360i(b)(1)) to require that certain user facilities (hospitals, nursing homes, ambulatory surgical facilities and outpatient treatment facilities) report certain adverse events. The SMDA also authorized FDA to require diagnostic outpatient facilities to submit reports. Under the SMDA, user facilities must report device-related deaths to FDA and to the manufacturer. They must also report serious illnesses and injuries to the manufacturer, or to FDA if the manufacturer's identity is unknown. Reports must be made as soon as practicable, but no later than 10 working days after the user facility becomes aware of a reportable event. In addition to individual adverse event reports, the SMDA requires each user facility to submit to FDA, on a semiannual basis, a summary of the reports it has submitted to FDA and to manufacturers. The provision in section 519(b) of the act that requires user facilities to report adverse events became effective by operation of law on November 28, 1991.

In addition to requiring reporting by user facilities, the SMDA added section 519(a)(6) (subsequently redesignated as 519(a)(9) by the 1992 amendments) to the act to require FDA to issue regulations regarding distributor reporting of adverse device events. The SMDA also added section 519(d) to the act to require both manufacturers and distributors to certify to FDA either the number of reports submitted in a year or that no such reports were submitted to the agency.

Distributor reporting requirements became effective on May 28, 1992, when the provisions relating to distributor reporting in the November 1991 tentative final rule became final by operation of law. In the Federal Register of September 1, 1993 (58 FR 46514), FDA published a notice announcing that the proposed distributor reporting regulations had become final by operation of law on May 28, 1992, and that these regulations had been amended by certain provisions of the 1992 amendments discussed below.

In the Federal Register of September 1, 1993, FDA also published a final rule, based on the November 1991 tentative final rule, requiring distributors to register and list their devices (58 FR 46514). Distributor registration and listing requirements became effective on October 1, 1993.

In a future rulemaking, FDA will propose in the Federal Register to revoke the distributor regulation that went into effect by operation of law and replace it with provisions based on notice and comment.

B. User Facility, Manufacturer and Distributor Reporting Requirements Under the Medical Device Amendments of 1992

Subsequent to FDA's issuance of the November 1991 tentative final rule to require adverse event reporting by user facilities, distributors, and manufacturers, on June 16, 1992, the President signed into law the 1992

amendments (Pub. L. 102–300), amending certain provisions of section 519 of the act relating to reporting of adverse device events. In the future, FDA will publish a proposed rule to fully implement its authority under the 1992 amendments. A summary of these changes follows:

1. Adoption of a Single Reporting Standard

Section 5(a) of the 1992 amendments adopts a single standard to specify when injuries caused by devices must be reported to FDA. Manufacturers and importers are required to report a device-related adverse event to FDA whenever they receive or otherwise become aware of information that reasonably suggests that one of their marketed devices may have caused or contributed to a death or serious injury, or has malfunctioned and that such device or a similar device marketed by them would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

Similarly, section 5(a) of the 1992 amendments revises the reporting requirements to require a user facility to report whenever the facility receives or otherwise becomes aware of information that reasonably suggests that a device ''has or may have caused or contributed'' to the death, serious illness or serious injury of a patient of the facility.

2. Single Definition of Types of Injuries That Must Be Reported

Section 5(a) of the 1992 amendments also adopted a single definition for the types of injuries that user facilities, manufacturers, importers, and distributors must report. This definition requires reporting of an injury or illness that is: (1) Life-threatening; (2) results in permanent impairment of a body function or permanent damage to a body structure; or (3) necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure. This definition differs from the previous statutory definition of ''serious injury'' or ''serious illness'' in the user facility provisions and the definition in the November 1991 tentative final regulation. The new definition deleted the requirement that an injury must require immediate intervention to preclude permanent impairment or damage in order to qualify as a reportable adverse event.

3. New Authority To Require Reporting of ''Other Significant Adverse Device Experiences''

The 1992 amendments also authorized FDA to issue regulations requiring user facilities, manufacturers, importers, and distributors to report ''significant adverse device experiences'' that the agency determines are necessary to be reported, other than deaths, serious injuries or serious illnesses, that might otherwise not fall within the definitions of reportable deaths, serious injuries, or malfunctions.

III. Reporting Forms

A. Individual Adverse Event Reports by User Facilities and Manufacturers

Under §§ 803.30 and 803.50, user facilities and manufacturers are required to submit device-related reports of individual adverse events on FDA Form 3500A or an FDA approved electronic equivalent. In order to simplify and consolidate reporting of adverse events, FDA announced in the Federal Register of February 26, 1993 (58 FR 11768) the availability of a new single ''MEDWATCH'' form for reporting adverse events and product problems with devices, drugs, biologics, special nutritional products and other products regulated by the agency (hereinafter referred to as the February 1993 notice). In response to FDA's request for comments on the form in the Federal Register, 79 comments were submitted by medical device trade associations and other regulated or affected entities. On June 3, 1993 (58 FR 31596), after consideration of these comments, FDA published the final reporting form. (The form is described in § 803.10.)

B. Annual Certification by Manufacturers

Under § 803.57, manufacturers must also submit at the time of their annual registration a completed FDA Form 3381 or an FDA approved electronic equivalent, certifying: (1) That all reportable events were submitted; (2) the number of reports submitted; or (3) that no reports were submitted during the previous 12-month period.

C. Semiannual Summaries by User Facilities

Under § 803.33, user facilities are required to submit, on FDA Form 3419 or an FDA approved electronic equivalent, a semiannual summary of all events reported during the prior reporting period. Semiannual reports must include information regarding the user facility, device manufacturers, products, and a brief description of the events.

D. Baseline Reports

Under § 803.55, manufacturers must submit baseline reports, on FDA Form 3417 or an FDA approved electronic equivalent, simultaneously with the submission of the first event report for each device. These reports, which are to be updated annually, must contain information on the manufacture and distribution of the relevant devices.

E. Effective Date of the Reports

Adverse event reports and other related reports required by this regulation must be submitted using the appropriate forms or approved electronic equivalents, after April 11, 1996.

IV. Summary and Analysis of Comments and FDA's Response

This final rule is based on FDA's analysis of the over 300 comments that the agency received in response to the November 1991 tentative final rule, and it conforms to certain statutory revisions in the 1992 amendments. This final rule reflects actions in two areas. First, it revises the manufacturer reporting regulations that have been in effect since 1984. Second, it implements the statutorily directed user facility reporting requirements that have been in effect since November 28, 1991.

Originally, FDA gave interested persons until January 27, 1992, to comment on the November 1991 tentative final rule. In the Federal Register of January 24, 1992 (57 FR 2861), FDA extended the comment period until February 26, 1992. A summary of the comments and FDA's responses follow:

A. Section 803.1—Scope

1. Several comments stated that the proposed regulation exceeds the SMDA and has no statutory authority. Many comments stated that the scope of the provisions was overly broad, and would increase the burdens, with unclear benefits, on all parties involved.

The agency disagrees. Section 519 of the act, as amended by the SMDA and the 1992 amendments, provides clear authority to issue this regulation. Section 519 of the 1976 amendments granted FDA the authority to issue regulations to require manufacturers to maintain such records, make such reports, and provide such information to FDA as may reasonably be necessary to ensure that devices are not adulterated or misbranded and are otherwise safe and effective for human use. The legislative history of the 1976

amendments reflects clear congressional intent to permit FDA to require, under the authority of section 519 of the act, manufacturers to report to FDA product defects and adverse effects of the firms' devices. (See H. Rept. 853, 94th Cong., 2d Sess. 23 (1976).)

Among other things, section 519 of the act states that any reporting requirement established under the authority of that section: (1) May not be unduly burdensome (considering the cost of compliance and the need for the requirement); (2) shall state the purpose for any required report or information and identify to the fullest extent practicable such report or information; (3) may not, except in certain circumstances, require the disclosure of a patient's identity; and (4) may not, except in certain circumstances, require the manufacturer of a class I device to maintain records or to submit information not in its possession, unless such report or information is necessary to determine whether a device is misbranded or adulterated. The House Report cautions, however, that these limitations ''should not be construed as limiting the Secretary's authority to obtain information needed to insure that the public is protected from potentially hazardous devices.'' (Id.) In its discussion of section 519 of the act, the House Report lists examples of reasonable reporting requirements, including reports of defects, adverse reactions and patient injuries. It is also clear from the legislative history that Congress intended FDA to use its authority under section 519 of the act to protect the public from potentially hazardous devices, as well as from devices with confirmed hazards. (Id.)

Since enactment of the 1976 amendments, Congress has focused considerable attention on FDA's implementation and enforcement of the act. Congress concluded that the 1976 amendments were not always adequate to protect the public health. (H. Rept. 808, 101st Cong., 2d Sess. 13–14 (1990); S. Rept. 513, 101st Cong., 2d Sess. 13–16 (1990).) To correct these problems, Congress passed and the President, on November 28, 1990, signed into law the SMDA, which amended the medical device provisions of the act.

The SMDA added section 519(b)(1) to the act to require that certain user facilities (e.g., hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment facilities) report deaths related to medical devices to FDA, as well as to the manufacturer if the manufacturer's identity is known. Section 519(b)(5)(A) of the act also provides FDA with authority, which FDA has exercised in this final regulation, to include outpatient diagnostic facilities in this requirement. Serious illnesses and injuries are to be reported to the manufacturer, or to FDA if the manufacturer's identity is not known. Reports must be made as soon as practicable but no later than 10 working days after the user facility becomes aware of an event. The responsibility for reporting is limited to events involving patients and employees of the facility. Each device user facility is also required to submit to FDA, on a semiannual basis, a summary of reports it has submitted to both FDA and manufacturers.

Section 519(d) of the act, as added by the SMDA, also requires manufacturers to certify to FDA the number of reports submitted in the preceding 12-month period or, alternatively, certify that no such reports have been submitted to the agency during the same period. FDA believes that section 519 of the act, as amended by the SMDA and the 1992 amendments, provides clear authority to issue this regulation for manufacturers and user facility reporting.

Moreover, FDA does not believe that the provisions of this regulation are overly broad or unduly burdensome. FDA has reviewed and revised the regulation to clarify and limit the scope as appropriate. FDA believes that certain classes of persons, which might otherwise fit within the definition of manufacturer, should be exempt from the reporting requirements because reports from these persons are not necessary to ensure that the device is not adulterated or misbranded, and the device is otherwise safe and effective. Accordingly under § 803.19, dental laboratories and optical laboratories have been exempted from the reporting requirements. FDA believes that these entities are not likely to receive reports of device-related deaths, serious injuries, or reportable malfunctions. In addition, requiring negative annual certification reports from these entities would be burdensome and not provide significant benefit to the public health. Therefore, FDA is excluding such entities from the reporting requirements. Other specific revisions are discussed in detail throughout this document.

FDA believes this regulation carefully balances the interests of public health with industry burdens by limiting the required information to only that which is necessary to evaluate risks associated with medical devices and that it will enable the agency better to take appropriate regulatory measures to protect the public health. Furthermore, FDA does not believe that the burden on reporting entities will be significant. Based upon the number of reports FDA has received since the publication of the November 1991 tentative final rule, the agency anticipates that it will receive approximately 150,000 reports the first year of this reporting program (the agency currently receives over 100,000 reports annually).

2. Several comments pointed out that these provisions go beyond the scope of the SMDA in that the timeframes for reporting adverse events exceed the requirements of SMDA. Other comments argued that all employees of reporting entities should not be included under the reporting requirements of the SMDA, and that accordingly, the timeframes for reporting should not be triggered upon the knowledge of ''any employee'' of a reporting entity.

FDA does not agree that the regulation's 10-day reporting timeframes for user facilities and 5-day and 30-day reporting timeframes for manufacturers are beyond the scope of the SMDA. Section 519(b)(1)(A) of the act specifies that user facilities must report certain adverse events as soon as practicable, but not later than 10 work days after becoming aware of the information. This section further specifies that FDA has the discretion to prescribe, by regulation, a shorter reporting period. While the statute does not specify the time periods allowed to manufacturers, the timeframes are consistent with section 519 of the act, the legislative history and FDA's public health responsibility to require that the reports are forwarded to the agency in a timely manner. FDA believes the time periods prescribed in the final regulation allow sufficient time for reporting entities to gather information, and are sufficiently time sensitive to allow the agency to respond rapidly and appropriately to protect the public health.

FDA also does not agree that employees of reporting entities should not be subject to the reporting requirements and that timeframes for reporting should not be triggered when employees of the reporting entities become aware of events. The scope of the act does not exclude any responsible persons who are employees of these entities from complying with section 519 of the act.

Under the final regulation, the reporting periods are based upon the time at which the reporting entity becomes aware of the reportable event. FDA believes that the final regulation's definition of ''becomes aware'' in § 803.3(c) properly defines the types of user facility and manufacturer employees who must become aware of a reportable event in order to trigger the reporting requirement. FDA believes

that it will be feasible for user facilities and manufacturers to train the employees, described below, to be familiar enough with the obligation to report adverse events immediately to the appropriate person that the manufacturer or user facility designates as responsible for MDR reporting.

Under § 803.3(c), a device user facility is deemed to have ''become aware'' when medical personnel of a facility become aware of a reportable event. ''Medical personnel'' are defined in § 803.3(r) as individuals who are licensed, registered, or certified to administer health care; individuals with professional or scientific degrees; individuals who are responsible for receiving medical complaints or adverse event reports; or supervisors of such persons. FDA believes that a user facility can easily notify these types of employees about their obligation to immediately forward possible device-related adverse events to the appropriate person designated by the hospital to submit such reports.

FDA believes that manufacturers have a direct responsibility to inform all employees to immediately forward adverse event information to the appropriate person appointed by those entities to submit MDR reports. Accordingly, FDA generally considers that a manufacturer becomes aware of an adverse event whenever any employee becomes aware of an adverse event. The one exception is for 5-day reports under § 803.53(b), which requires manufacturers to submit a report when the manufacturer becomes aware of information that an adverse event or events necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health.

Under § 803.53, manufacturers must submit a 5-day report under two different circumstances. The first type of 5-day reporting obligation arises after a manufacturer has received a written request from FDA for 5-day reports for specific types of adverse events. Under this circumstance, a 5-day report must be submitted when any employee becomes aware of an adverse event. FDA believes that the awareness of any employee should trigger the reporting requirement when FDA has informed the manufacturer of the need for specific adverse events that require 5-day reports because the manufacturer could easily inform all of its employees of FDA's request.

The second type of 5-day report does not involve a direct request from FDA and is required only when the manufacturer becomes aware that an event or events necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health. Accordingly, this type of 5-day reporting requirement would only arise if remedial action were required, and the remedial action is necessary to prevent an unreasonable risk of substantial harm to the public health. If no remedial action is required, or the remedial action is taken but it is not necessary to prevent an unreasonable risk to the public health, reportable adverse events should be submitted as 30 day reports.

Because FDA does not believe certain employees, such as non-technical staff, would be able to recognize that an adverse event or events may require remedial action to prevent a substantial risk to the public health, the final regulation requires that these types of 5-day reports be submitted only when employees holding certain positions of responsibility become aware of adverse event information. Accordingly, the final regulation considers a manufacturer to be aware of this type of 5-day report only when an employee with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or a person whose duties relate to the collection and reporting of adverse events, becomes aware that a reportable MDR event or events necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health. FDA believes that limiting the type of person who must be aware of the adverse event to these types of individuals is appropriate because persons in these positions should be able to recognize that the event or events may present significant risks to the public health.

3. Some comments suggested limiting the scope of these provisions so that reporting is required only when there is a death or serious injury. Other comments suggested that reports not be required if the device was only indirectly responsible for a death or serious injury, or was not a significant factor. Another comment suggested that reporting be limited to instances of malfunction.

Section 519 of the act provides FDA with authority to require reporting of adverse events other than deaths or serious injuries. FDA has exercised this authority since 1984 by requiring manufacturers to report certain malfunctions. Moreover, section 519(a)(1) of the act (as amended by section 5 of the 1992 amendments) specifically states FDA's adverse event reporting regulations must require manufacturers to report malfunctions if the recurrence of the malfunction would be likely to cause a death or serious injury, regardless of whether an actual death or injury occurs. Because devices with such malfunctions pose significant risks, FDA needs to be informed of these incidents. The final regulation, therefore, requires manufacturers to report malfunctions when recurrence would be likely to cause a death or serious injury. User facilities are encouraged but not required to report malfunctions to manufacturers and distributors.

Section 519(b)(1)(B)(ii) of the act, as added by the 1992 amendments, also provides FDA with authority to require user facilities, distributors, and manufacturers to report other significant adverse device experiences that FDA determines necessary. Therefore, in a future issue of the Federal Register, FDA will propose to require that certain events be reported as significant adverse device experiences. Although some of these experiences may not have caused harm, FDA believes such events should be reported because of the potential risk to the public health if the event were to recur. Such information will enable the agency to take appropriate measures to prevent such recurrences.

FDA also disagrees with the comments stating that reporting should be required only when a device directly causes an adverse event or is a significant factor. Section 519(a)(1) and (b)(1)(A) of the act requires reporting of any adverse event when information reasonably suggests that a marketed device ''may have caused *or contributed*'' to a reportable event (emphasis added). Limiting reporting to adverse events directly or significantly caused by devices would narrow the statutory reporting standard which requires reporting of adverse events when a device ''may have caused *or contributed*'' to an adverse event (emphasis added).

FDA cannot agree with the comment that suggested reporting be limited to instances of malfunction. As stated above, section 519 of the act requires reporting of deaths and serious injuries, and authorizes FDA to require reporting of other significant adverse device experiences, as well as malfunctions.

FDA does not agree with the comments that reporting should not be required when events are anticipated or intrinsically caused by the device. The statute does not exempt events that were anticipated or intrinsically caused by the device. (See section 519(a) (1) and (b)(1)(B) of the act.) Moreover, merely knowing that adverse events are anticipated or intrinsically caused by a device does not obviate the need for information contained in event reports.

FDA needs to know the frequency and severity of adverse events in order to take appropriate action.

4. One comment objected to providing warranty information. Other comments stated that a manufacturer's responsibility to report should end at the expiration of the warranty.

The agency disagrees. Reporting requirements under section 519 of the act are not restricted or limited in any way by manufacturer warranties. Section 519 of the act requires manufacturers to report certain adverse events regardless of whether the warranty has expired. Warranties are private contracts between the purchaser and the manufacturer. In order to protect the public health and determine whether actions should be taken with respect to a device associated with an adverse event, FDA must receive information regarding all reportable events, including those that occur after a manufacturer's warranty has expired.

5. One comment stated that certain adverse events may result from the user not knowing how to properly use the device, and that this would lead to the reporting of events properly attributable not to the device, but to its incorrect use.

As with the 1984 manufacturer adverse event reporting regulation, this rule requires reports of certain adverse device events caused by user error. Device injuries attributed to user error may indicate that the device is misbranded within the meaning of section 502(f) of the act (21 U.S.C. 352(f)) in that the device fails to bear adequate directions for use or adequate warnings. In such cases, reports of adverse events that result from user error may alert FDA to the need for improved labeling to prevent future injuries.

6. One comment suggested that independent device service personnel be added to the list of people required to report because some manufacturers may not receive reports from their own service personnel.

Under section 519 of the act, only user facilities, manufacturers, and distributors are required to report adverse events to FDA. User facilities are considered to have ''become aware'' of such information whenever any medical personnel becomes aware of a reportable event. Manufacturers are considered to have ''become aware'' of events required to be reported in 30 days, or required to be reported in 5 days, pursuant to an FDA request, when any employee becomes aware of an adverse event. Manufacturers are considered to have become aware of significant risk 5-day reports, which are more fully described in IV.A., comment 2, of this document, only when certain higher level employees become aware of adverse events requiring remedial action.

FDA believes that an employee of a manufacturer includes independent service personnel who are contracted by manufacturers to service their medical devices. It is the responsibility of manufacturers to ensure that their service personnel, whether staff employees or under contract, are informed of the requirement to report deaths, serious injuries, malfunctions, or other significant adverse device experiences that may be required by regulation in the future.

B. Section 803.3—Definitions

7. Many comments stated that the definition of ''device family'' (§ 803.3(e)) that is used to identify similar groups of devices on the manufacturer baseline report, is vague and overly broad. One comment suggested that each device be listed in the regulation; others suggested that the definition be deleted.

FDA does not agree that the definition should be deleted. The identification of the device family on the baseline reports for individual device models will help FDA and manufacturers group similar models for analysis. This will aid in identifying the causation and nature of device-related problems. FDA agrees, however, that the definition should be clarified and has revised it accordingly. Manufacturers may use their own methods of grouping devices if the groupings meet the definition of ''device family,'' i.e., the devices have the same basic design and performance characteristics related to safety and effectiveness, intended use and function, and device classification and product code. FDA has the discretion to determine the appropriateness of a manufacturer's determination of the devices that comprise a device family. It would be impractical to list each device in the regulation.

8. Many comments stated that the definition of ''device user facility'' (§ 803.3(f)) is vague. Several of these comments requested clarification regarding what facilities are included in the definition. Several comments suggested that certain groups (i.e., blood banks, independent rescue squads, school clinics or nurse offices, employee health units, dental offices and free-standing care units operating as private physician offices) be specifically included or excluded from the definition.

FDA agrees in part. Under section 519(b)(5)(A) of the act, FDA has exercised its discretion to include outpatient diagnostic facilities that are not physician offices in the definition of ''device user facility.'' Under § 803.3(f), device user facility means ''a hospital, ambulatory surgical facility, nursing home, or an outpatient diagnostic or treatment facility which is not a physician's office.'' To further clarify this definition, FDA has included definitions for the terms ''physician's office'' (§ 803.3(w)), ''hospital'' (§ 803.3(l)), ''ambulatory surgical facility,'' (§ 803.3(b)), ''nursing home'' (§ 803.3(s)), ''outpatient diagnostic facility'' (§ 803.3(t)), and ''outpatient treatment facility'' (§ 803.3(u)).

Under section 519(b)(5)(A) of the act, physicians' offices are excluded from the definition of user facilities and are thereby excluded from adverse event reporting requirements. FDA believes that groups performing functions similar to physicians' offices such as dental offices and offices of other health care practitioners (e.g., chiropractors, optometrists, nurse practitioners, school nurse offices, employee health clinics, free-standing care units) fall within the definition of ''physician's office'' and therefore should be excluded from reporting. FDA invites further public comment on the definition of ''physician's office'' and may issue further guidance as necessary.

FDA has defined ''outpatient treatment facility'' as a distinct entity that operates for the primary purpose of providing non-surgical therapeutic care. FDA believes that ambulance or rescue squad services and independent home health care agencies fall within this definition. Given the critical risks posed by potential malfunctions of devices used by ambulance services and in home health care settings, FDA believes the inclusion of these services within the definition of ''outpatient treatment facility'' is appropriate.

Blood banks that operate in hospitals or as outpatient treatment or outpatient diagnostic centers fall within the definition of user facility. Accordingly, device-related adverse events that meet the definition of MDR reportable event, as defined in § 803.3(q), that occur in such blood banks must be reported. FDA invites further public comment on the definition of user facility and may issue further guidance as necessary.

9. Several comments stated that the definition of ''imminent hazard'' relating to types of adverse events that FDA proposed should have 3-day reporting timeframes (proposed § 803.3(g)) is unclear. A few comments suggested that the definition be deleted because it is too subjective, belongs in another regulation, or is beyond the scope of the SMDA. Some comments

stated that more than 3 days were needed for reporting.

FDA agrees. The agency is extending the time period to make such reports from 3 days to 5 days. FDA is also renaming ''imminent hazard reports'' as ''5-day reports'' (defined in § 803.3(k)), and has clarified this requirement in § 803.53.

The purpose of the 5-day report is to alert the agency rapidly to adverse events that may pose an unreasonable risk of substantial harm to the public health. Thus, the definition of ''5-day report'' has been revised to mean a report of an adverse event required by a manufacturer, submitted on FDA Form 3500A or an FDA approved electronic equivalent within 5 work days of: (1) Any employee, who is a person with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or a person whose duties relate to the collection and reporting of adverse events, becoming aware that a reportable MDR event or events, from any information, including any trend analysis, necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health; or (2) any employee becoming aware of an adverse event, if the manufacturer has received a written request from FDA for the submission of a 5-day report for those types of adverse events. When such a request is made, the manufacturer shall submit a 5-day report for all subsequent adverse events of the same nature that involve substantially similar devices for the time period specified in the written request. The time period stated in the original written request can be extended by FDA if it is in the interest of the public health.

FDA does not intend that a manufacturer delay or interrupt a remedial action in order to submit a 5-day report. The report must be made within 5 days of the manufacturer becoming aware that a reportable event or events necessitate remedial action to prevent unreasonable risk of substantial harm to the public health. Information that would reasonably suggest remedial action is necessary to prevent such risk may, for example, be from one MDR reportable event that makes the manufacturer aware of a serious design flaw that necessitates remedial action to prevent an unreasonable risk of substantial harm to the public. On the other hand, information that would reasonably suggest remedial action is necessary may result from an internal trending analysis of several MDR reports that make the manufacturer aware that serious injuries or deaths occur at a much higher frequency than expected. Further discussion relating to when a manufacturer is considered aware of a reportable event is in section IV.A., comment 2, of this document.

Manufacturers who submit 5-day reports are not required to submit reports of removals and corrections under section 519(f) of the act. Any information not available for reporting under the 5-day reporting timeframe may be submitted in a supplemental report.

FDA does not agree with comments asserting that 5-day reports are beyond the scope of the SMDA or belong in another regulation. Requiring 5-day reports is consistent with FDA's authority under section 519(a)(1) of the act to issue regulations requiring manufacturers to report information that reasonably suggests that one of their marketed devices ''may have caused or contributed to a death or serious injury, or has malfunctioned and that such device * * * would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.'' For the protection of the public health, FDA may limit the time allowed to manufacturers for reporting events of which the agency should be quickly aware.

10. Many comments stated that the requirements relating to user facility incident files (proposed § 803.35(c)) that contain documents related to adverse events that a user facility must maintain are overly burdensome because the definition of ''incident files'' in proposed § 803.3(h) is overly broad. Many of these comments suggested that the definition of incident files be removed or changed in order to clarify or limit the scope of requirements relating to the files. Other comments suggested that FDA's access to the files be limited.

The agency agrees that the definition of these files (which have been renamed ''MDR event files'' in § 803.18 of the final regulation) could be narrowed. Accordingly, FDA has revised the definition of MDR event files to include MDR reports filed with FDA or other entities, and documents related to the adverse event, including documents relating to deliberations and decisionmaking processes used in the evaluation or determination of whether an event is an MDR reportable event. The final rule also allows the reporter to incorporate certain information by reference, such as medical records, patient files, and engineering reports, rather than include them in the MDR event file.

FDA does not agree that agency access to user facility files should be limited. Under § 803.18(b), user facilities shall permit any authorized FDA employee during all reasonable times to have access to, and to copy and verify the records required under part 803. FDA has authority to inspect files under section 704(e) of the act (21 U.S.C. 374(e)). Section 704(e) of the act states that every person required to maintain records under section 519 of the act, and every person who is in charge or custody of such records, shall permit FDA at all reasonable times to have access to and to copy and verify such records. In issuing a regulation stating its authority under section 704(e) of the act to have access to user facility adverse event files, FDA is exercising its duty under the statute to protect the public health by ensuring that user facilities comply with reporting requirements issued under section 519 of the act.

11. Several comments stated that the definition of what kind of information triggers the reporting requirements, specifically, the definition of ''information that reasonably suggests that there is a probability that a device has caused or contributed to a death or serious injury, or serious illness'' (proposed § 803.3(i)), is unclear and requires further definition.

The agency agrees and has clarified this concept in § 803.20(c). As explained in section II.B.1 of this document, section 5 of the 1992 amendments revised section 519(a)(1) of the act, subsequent to FDA's November 1991 tentative final rule, to require the agency to issue regulations that require manufacturers and importers to report to FDA ''whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices: (1) May have caused or contributed to a death or serious injury, or (2) has malfunctioned and that such device or a similar device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.'' Similarly, section 5 of the 1992 amendments revised the reporting standard for user facilities under section 519(b)(1) (A) and (B) of the act to require a user facility to submit a report whenever it receives or otherwise becomes aware of information ''that reasonably suggests that a device has or may have caused or contributed to a death * * * or serious illness of, or serious injury to, a patient of the facility * * *.''

Under the revised 1992 amendments' statutory reporting standards, FDA has no discretion to change the reporting standards for manufacturers and user

facilities. Accordingly, FDA has revised the wording of the reporting standards in the final regulation for user facilities and manufacturers to reflect the exact wording in the 1992 amendments for these entities. Therefore, the final regulation requires user facilities and manufacturers to report certain adverse events whenever there is ''information that reasonably suggests that a device may have caused or contributed to a death or serious injury.''

The final rule describes, in § 803.20(c) ''[i]nformation that reasonably suggests that a device has or may have caused or contributed to an MDR reportable event'' to be any information, such as professional, scientific or medical facts and observations or opinions, that would reasonably suggest that a device has caused or may have caused or contributed to an MDR reportable event. Reports are not required when there is information that would cause a person who is qualified to make a medical judgment (e.g., a physician, risk manager, or biomedical engineer) to reach a reasonable conclusion that a device did not cause or contribute to an MDR reportable event. Information that leads to the conclusion that an event is not reportable must be retained in the MDR event files for the time periods specified in § 803.18.

The final rule further defines, in § 803.3(d), ''caused or contributed'' to mean that a death or serious injury was or may have been attributable to a medical device, or that a medical device was or may have been a factor in the adverse event including events occurring as the result of its failure, malfunction, improper or inadequate design, labeling, performance, manufacture, or user error. Devices may cause or contribute to MDR reportable events either directly or indirectly.

12. One comment stated that malfunctions of medical devices used for a nonmedical purpose should be exempted. Other comments stated that the term ''malfunction,'' as defined in § 803.3(m), needed clarification, especially with regard to implanted devices. Another comment asked who is required to report implant malfunctions.

Under this final regulation in subpart E of part 803 manufacturers must report certain malfunctions, including implant malfunctions, that would be likely to cause or contribute to an MDR reportable event, regardless of how the device is used. Although user facilities are not required by statute or regulation to report malfunctions, FDA encourages user facilities to report malfunction information to manufacturers and distributors. Malfunction reports provide important information to FDA concerning device safety.

Reporters do not need to assess the likelihood that a malfunction will recur. The fact that the malfunction occurred once leads to the presumption that the malfunction will recur. A malfunction is reportable if any one of the following is true: (1) The chance of a death or serious injury occurring as a result of a recurrence of the malfunction is not remote; (2) the consequences of the malfunction affect the device in a catastrophic manner that may lead to a death or serious injury; (3) the malfunction results in the failure of the device to perform its essential function and compromises the device's therapeutic, monitoring or diagnostic effectiveness which could cause or contribute to a death or serious injury, or other significant adverse device experiences required by regulation (the essential function of a device refers, not only to the device's labeled use, but for any use widely prescribed within the practice of medicine); (4) the malfunction involves a long- term implant or a device that is considered to be life-supporting or life-sustaining and thus is essential to maintaining human life; or (5) the manufacturer takes or would be required to take an action under sections 518 or 519(f) of the act as a result of the malfunction of the device or other similar devices.

Malfunctions are not reportable if they are not likely to result in a death, serious injury or other significant adverse device experience, that FDA, in a future rulemaking, may require by regulation. A malfunction which is or can be corrected during routine service or device maintenance must be reported if the recurrence of the malfunction would be likely to cause or contribute to a death or serious injury, or other significant adverse device experiences required by a future regulation.

13. Several comments stated that the definition of a ''manufacturer'' (§ 803.3(n)), who is subject to adverse event reporting requirements, is overly broad with regard to custom devices and devices modified by users. One comment suggested that the definition be modified to include manufacture for commercial distribution only.

FDA believes that for protection of the public health, the definition should be broad enough to provide for reporting by all persons engaged in the manufacture, preparation, propagation, compounding, assembly or processing of medical devices, who may receive information about adverse events related to medical devices, except those manufacturers exempted under section 519(c) of the act and § 803.19. Under section 519(c) of the act and § 803.19, a practitioner licensed by law to prescribe or administer devices intended for use in humans and who manufactures or imports devices solely for use in the course of that individual's professional practice is exempt from reporting. Manufacturers of devices not being commercially distributed but which are being used under an investigational device exemption are required to report adverse events under parts 812 and 813 (21 CFR parts 812 and 813) and are not required to submit reports under part 803. Parts 812 and 813, however, require reporting of all adverse device effects.

14. Many comments stated that the definition of ''MDR reportable event'' (§ 803.3(q)) is unclear, beyond the scope of SMDA, or otherwise in need of revision.

The definition of ''MDR reportable event'' has been modified to conform to revisions made to section 519 of the act by section 5 of the 1992 amendments. As defined in § 803.3(q), the revised definition of ''MDR reportable event'' mirrors the language of section 519(a)(1) and (b)(1) of the act, as amended by section 5 of the 1992 amendments.

FDA has further clarified terms contained in the definition of an ''MDR reportable event'' throughout this document. These include: ''caused or contributed,'' as defined in § 803.3(d) and discussed in section IV.B., comment 11 of this document; ''information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury'' as defined in § 803.20(c) and discussed in section IV. B., comment 11 of this document; ''malfunction'' as defined in § 803.3(m) and discussed in section IV.B., comment 12 of this document; ''become aware'' as defined in § 803.3(c) and discussed in sections IV.A., comments 2 and 6, and IV.D., comment 27 of this document; and ''serious injury,'' as defined in § 803.3(aa) and discussed in section IV.B., comment 21 of this document. The terms ''necessitated medical or surgical intervention'' and ''permanent,'' which are now included in the definition of ''serious injury,'' are also clarified in this document. ''Necessitated medical or surgical intervention'' is discussed in section IV.B., comment 16 of this document. FDA believes that these added definitions and discussion of these terms this document provides adequate clarification of the term ''MDR reportable event.''

15. A few comments stated that the definition of ''manufacturer report number'' (§ 803.3(o)), should be changed to allow flexibility and permit

manufacturers to use their own numbers.

The agency disagrees. A uniform numbering system is essential for FDA evaluation of reports, recordkeeping, filing and analyses. Because the manufacturer report number is based on the manufacturer registration number and all manufacturing sites are required to have a registration number, there is no additional burden on the manufacturer to comply with this requirement. If the manufacturer reporting site does not have a registration number, FDA will assign a temporary registration until the site is officially registered.

16. Several comments stated that the definition of ''necessitated immediate medical or surgical intervention'' (proposed § 803.3(o)), included as an element of the ''serious injury'' definition in § 803.3(aa), which is unclear, overly broad, and unduly burdensome. Some of these comments suggested that the terms ''timely'' and ''intervention'' be further defined or a standard for ''immediate intervention be set (e.g., within 6 hours). Other comments suggested that the event be reported only if significant intervention actually occurred.

In light of the 1992 amendments, most of the comments relating to the ''immediate medical or surgical intervention'' definition are no longer relevant. Section 5(a)(2) of the 1992 amendments revised and broadened the scope of reportable events that fall within the definition of ''serious injury'' by deleting the immediacy requirement from the definition. Under the 1992 amendments' revisions, FDA must require that injuries be reported that necessitate medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure, that have or may have been caused by a device, regardless of the immediacy of the surgical or medical intervention.

FDA agrees with comments suggesting that an event be reported if significant intervention actually occurred. FDA believes, however, that any intervention is per se ''significant'' if it is necessary to preclude permanent impairment of a body function or permanent damage to a body structure.

17. Many comments stated that the definition of ''patient of the facility'' whose serious injuries and deaths user facilities must report(§ 803.3(v)) is too broad. Several comments objected to including individuals being diagnosed, treated, or receiving care ''under the auspices of'' the facility under this definition. Other comments objected to including employees of the facility who suffer death or serious injury from a device used at or by the facility as a ''patient of the facility.'' They further asserted that FDA does not have clear jurisdiction over these types of employee events and that MDR reports would duplicate reports required by other regulations (e.g., Occupational Safety and Health Administration (OSHA) regulations). A few comments suggested that the term ''patient'' be further defined.

The agency agrees that including any individuals treated or diagnosed ''under the auspices'' of a facility could be read very broadly to include certain individuals that are not intended to be covered by this regulation. Accordingly, FDA has revised this definition to include only individuals that are ''being diagnosed or treated and/or receiving medical care at or under the control or authority of the facility.''

FDA does not agree, however, that employees of the facility who are injured and/or receive medical care arising from a device-related event at the facility should be excluded from the definition of ''patient of the facility,'' and that information provided to other agencies for work-related injuries is duplicative of information required in an MDR report. FDA believes that facility employees who suffer injury or death in a device-related event reasonably fall within the meaning of the requirement under section 519(b)(1)(A) of the act to report such events that involve a ''patient of the facility.'' To ensure the safety and efficacy of devices, FDA needs information required in the MDR reports for all device-related adverse events regardless of the individual's employment relationship to the facility. MDR reports are required to provide information that is specifically tailored to help FDA determine the risks posed by a certain device and whether further action may be necessary. Reports required by other agencies relating to work injuries, such as OSHA, do not provide the MDR report information that is necessary for FDA to make these determinations. Accordingly, there is no unnecessary duplication involved in reporting.

18. A few comments stated that injuries must be reported because they are ''permanent,'' (proposed § 803.3(q)), should exclude ''trivial'' or ''cosmetic'' irreversible damage.

FDA agrees in part. To improve clarity, the agency has included the definition of ''permanent'' with the ''serious injury'' definition (§ 803.3(aa)). The agency has also modified the definition of ''serious injury'' to exclude trivial irreversible damage. While most cosmetic damage will be trivial, not all cosmetic damage would be considered trivial. Therefore, FDA is not excluding all cosmetic damage from this definition.

19. A few comments recommended that the definition of ''probability, probable, or probably'' in the reporting standard be clarified and suggested using a ''greater than 50 percent'' standard.

As discussed earlier in this document, the 1992 amendments deleted the term ''probability'' from the reporting standard and revised the standard for manufacturers and user facilities. Therefore, this definition has been removed from the final rule.

20. A few comments stated that the definition of a ''remedial action,'' (§ 803.3(y)), which is required to be reported under §§ 803.53(a) and 803.52(f)(7), is unclear. One comment suggested that the definition be deleted; another suggested that it be removed from the user reporting form.

The agency does not agree that this definition should be deleted. The agency should be aware of remedial actions taken in response to reportable events in order to thoroughly evaluate the event. However, the definition has been reworded for clarity. Also, the request for remedial action information has been removed from the user facility section of the final reporting form (FDA Form 3500A) because user facilities do not ordinarily undertake remedial actions. The revised definition of ''remedial action'' appears in § 803.3(y).

21. Several comments stated that the definition of a reportable ''serious injury or serious illness'' (§ 803.3(aa)) is overly broad and needs to be better defined. Another comment suggested that these terms be deleted from the manufacturer and distributor report forms altogether. One comment suggested that ''temporary damage'' be excluded from the definition.

The agency disagrees with comments that requirements to report serious injuries or illnesses should be deleted from the manufacturer and distributor reporting form. Section 519(a)(1)(a) of the act requires manufacturers to report serious injuries. Nor does FDA agree that the definitions of these terms are overly broad. The regulatory definition in § 803.3(aa) of the terms ''serious illness'' and ''serious injury'' are derived directly from the statutory definitions provided in section 519(a)(2) and (b)(5)(B) of the act, as amended by the 1992 amendments.

The SMDA added section 519(b)(5)(B) to require that user facilities report ''serious illnesses'' as well as ''serious injuries.'' The 1992 amendments

amended section 519(a)(2) to require that manufacturers report only ''serious injuries.'' The statutory definitions of the terms ''serious injury'' and ''serious illness,'' however, are identical. (See section 519(a)(2) and (b)(5)(B) of the act.) The legislative history of the 1992 amendments indicates that ''the term 'injury' probably covers any illness that could be caused by a device * * *.''(138 Congressional Record H 3884 (1992).)

In accordance with the statutory definition, FDA has defined ''serious injury'' to mean an injury or illness that is: (1) Life-threatening; (2) results in permanent impairment of a body function or permanent damage to body structure; or (3) necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

As stated in response to comments described in section IV.B., comment 18 of this document, FDA has further clarified the definition of serious injury by clarifying the term ''permanent'' within the definition in § 803.3(aa). Because section 519(a)(2) and (b)(5)(B), as amended by the 1992 amendments, identically defines the terms ''serious injury'' and ''serious illness'' FDA has revised the definition of the term ''serious injury'' to include ''serious illness.''

FDA does not agree with the comment stating that temporary damage should not fall within the definition of ''serious injury.'' Section 519(a)(2)(A) and (b)(5)(B) define serious injury to include any event that is ''life-threatening.'' Because life-threatening events may include temporary damage, FDA believes that life-threatening events that may have been caused by a device must be reported, regardless of whether the damage was ''temporary.''

22. One comment stated that the definition of ''user facility report number'' (§ 803.3(dd)) needs to be more specific, especially regarding leading zeroes in the number.

The agency agrees and has modified the definition for clarity. The revised definition appears in § 803.3(dd).

23. Several comments requested that the terms: ''become aware,'' ''expected life,'' and ''shelf life'' be defined.

FDA agrees. These definitions have been included in the final rule and appear in § 803.3(c), (i), and (bb) respectively. For further discussion of the term ''become aware,'' see sections IV.A., comments 2, 6, and IV.D., comment 27 of this document.

C. Section 803.9—Public Availability of Reports

24. Many comments expressed concern over confidentiality of the reports.

The agency is aware of confidentiality concerns and will protect the confidentiality of information to the fullest extent allowed under the law. FDA is generally required, under the Freedom of Information Act (FOIA) (5 U.S.C. 552), to make publicly available reports received under this final rule. Public availability of such reports is governed by FOIA and part 20 (21 CFR part 20). Before a report is made publicly available, FDA, in accordance with FOIA and part 20 as promulgated in 1984, will delete from the report information whose disclosure would constitute an invasion of personal privacy (see 5 U.S.C. 552(b)(6); § 20.63) or information that constitutes trade secret, confidential commercial or financial information (see 5 U.S.C. 552(b)(4); § 20.61). Persons who are subjects of the reports, however, can receive all information in the report concerning themselves, except for trade secret, confidential commercial or financial information.

FDA has modified § 803.9 in this final rule to clarify that the identity of a third party who submits a voluntary adverse event report, such as a physician or other health care professional, will be protected. This revision does not add any new protection for voluntary third-party reporters. It merely clarifies that the existing protection afforded to voluntary reporters under § 20.111 is applicable to MDR reports.

Revised § 803.9 incorporates the confidentiality provisions relating to user facility reporting in section 519(b)(2) of the act, as added by the SMDA. Specifically, § 803.9(c) states that FDA may not disclose the identity of a device user facility except in connection with : (1) An action brought to enforce section 301(q) of the act (21 U.S.C. 331(q)), which includes the failure or refusal to furnish material or information required by section 519 of the act; (2) a communication to a manufacturer of a device which is the subject of a report of a death, serious injury or other significant adverse device experience required by a user facility under § 803.30; (3) a disclosure relating to a manufacturer or distributor report which is required under section 519(a) of the act; and (4) a disclosure to employees of the Department of Health and Human Services, to the Department of Justice, or to duly authorized committees and subcommittees of the Congress.

As stated above, § 803.9, which is derived from the statutory language in section 519(b)(2)(C) of the act, allows disclosure of the user facility's identity when disclosure is required under provisions requiring manufacturer and distributor reporting. The legislative history of section 519(b)(2)(C) of the act states that this section is not intended to affect public access to information contained in MDR reports to FDA, and that the full requirements of reporting under section 519(a) of the act (the manufacturer and distributor reporting provisions), will apply. If a manufacturer chooses to forward a user report to FDA, that will then constitute a report described in section 519(a) of the act, not a report described in section 519(b) of the act, for purposes of public access to the contents of the report. (H. Rept. 101–808, 101st Cong., 2d sess., pp. 21–22). Accordingly, if information in a required user facility report is submitted as part of a distributor or manufacturer report, the information relating to the identity of the user facility would be disclosable because the report would be submitted under section 519(a) of the act. FDA notes that, in accordance with part 20 and section 519(b) of the act, the agency will not disclose the identity of the user facility physicians, persons designated by the user facility to submit reports, or other user facility employees, although the identity of the user facility may be disclosed.

25. Many comments expressed concern that the regulation will increase liability and that the availability of reports will lead to civil litigation.

Although FDA is aware that litigants in civil suits may attempt to use information in adverse event reports as evidence in product liability suits, FDA does not have any information as to whether the information from reports will actually lead to the initiation or increase of civil litigation. Section 519 of the act requires user facilities and manufacturers to submit reports of adverse events. While these reports may have some effect on a reporter's liability, these regulations are required to implement statutory requirements. They are also necessary to make FDA aware of unsafe devices and better enable the agency to take appropriate action to safeguard the public health. With respect to user facilities, section 519(b)(3) of the act provides some protection against liability in that it prohibits the admissibility of device user facility adverse event reports into evidence for civil actions involving private parties, except where the party making the report had knowledge that information in the report is false.

With respect to manufacturers and distributors, FDA has attempted to provide protection from liability by clearly stating in § 803.16 of this final rule, and including a statement on FDA Form 3500A, that the submission of a report does not constitute an admission that the user facility, manufacturer/distributor, product, or medical personnel caused or contributed to the event. Moreover, in the Federal Register of April 3, 1995 (60 FR 16962), FDA issued a final rule that became effective on July 3, 1995, that protects the identity of voluntary reporters by preempting State laws or other requirements requiring or permitting disclosure.

26. Comments objected to providing FDA with proprietary information.

FDA may require the submission of certain proprietary information because it is necessary to fully evaluate the adverse event. Proprietary information will be kept confidential in accordance with § 803.9, which prohibits public disclosure of trade secret or confidential commercial information, and in accordance with the FOIA and FDA regulations in 21 CFR part 20.

D. Reports by Device User Facilities (Part 803, Subpart C)

27. Several comments stated that 10 days is too short a time period for user facilities to report adverse events properly. One comment suggested that the 10-day ''clock'' for reporting should commence when the facility completes its investigation and determines that an event is reportable.

FDA cannot agree because the 10-day time period is the maximum time allowed by the statute. (See section 519(b)(1)(A) of the act.) However, this comment raises the issue of when the reporting ''clock'' starts. In the preamble to the November 1991 tentative final rule, FDA proposed to consider a user facility to have ''become aware'' of reportable events only when it has sufficient information to make a determination that a report is required, and that this commences the 10-day reporting period. (See the notice of availability of the MEDWATCH adverse event reporting form (FDA Form 3500A) in the Federal Register of June 3, 1993 (58 FR 31596.))

FDA has reevaluated the issue of when a user facility should be considered to ''become aware'' of information that triggers the reporting requirements and has determined that user facilities should be considered to have ''become aware'' of information that triggers reporting requirements when they first receive a report. The agency does not believe that information-gathering required of user facilities is sufficiently burdensome or time consuming to justify triggering the 10-day timeframe any time after they receive a report of an adverse event. A user facility, unlike a manufacturer, is not required to provide any information that is not in its possession. For further discussion on when user facilities are considered to have ''become aware'' of an event, see section IV.A, comment 2 of this document.

28. Several comments suggested that the user/operator error reporting requirement be eliminated.

As stated in section IV.A., comment 3 of this document, the language of the SMDA as amended by the 1992 amendments requires reporting in all instances where the facility becomes aware of information that reasonably suggests that a device has or may have caused or contributed to certain device-related adverse events. FDA needs to be aware of events that are related to user error any time such error may have caused or contributed to a reportable event. By receiving information on device user problems, FDA can determine whether additional measures are necessary to resolve such problems, for example, relabeling or a redesign of the device.

29. One comment suggested that all reports be sent only to FDA.

FDA does not agree. This regulation merely implements section 519(b) of the act, which requires user facilities to submit deaths to FDA and the manufacturer, and serious injuries to the manufacturer or FDA, if the identity of the manufacturer is unknown.

30. Some comments suggested that an anonymous reporting path be provided for reporting directly to FDA.

FDA disagrees. It is important that both FDA and the manufacturer know the identity of the user facility in case followup information is needed. As discussed in section IV.C., comment 24 of this document, the act does provide some protection of the identity of user facilities.

31. Several comments requested clarification of the terms ''adverse events,'' ''formally affiliated,'' and ''user error.''

Adverse events are those events that may be related to an FDA-regulated product and which have a negative or harmful effect on the user or recipient of the product's use. The only adverse events required to be reported under this regulation, however, are ''MDR reportable events'' as defined in § 803.3(q) of the final rule.

The term ''formally affiliated'' means individuals who are employed by a user facility or medical personnel who have admitting, practicing, or equivalent privileges at a user facility. Reporting requirements for user facilities are triggered when medical personnel who are employed by or otherwise ''formally affiliated'' with the facility, receive information or become aware of information that reasonably suggests a reportable event has occurred.

The term ''user error'' means any error made by the person using the device. A user error may be the sole cause or merely contribute to a reportable adverse event.

32. One comment suggested that FDA provide user facilities with manufacturer and agency contacts. Another comment suggested that a hotline be established for reporting.

It would be very difficult for FDA to establish and maintain up-to-date manufacturer ''contact'' lists for device user facilities. The agency, however, will consider publicizing a list of firm contact names and telephone numbers. Although there is no requirement for telephone reporting in this regulation, emergency situations can be handled in accordance with § 803.12(c) of this final rule.

33. One comment asked how foreign user facilities will be affected by these provisions.

Only those user facilities located outside the United States which are operated by the U.S. Government are required to report under this regulation.

34. Comments suggested that the requirements for semiannual reports be deleted because they are redundant. Other comments suggested that no semiannual report be required if no reports had been submitted during that period.

Semiannual reports are required by section 519(b)(1)(C) of the act and therefore the requirement cannot be deleted. Under § 803.33(c), the user facility is not required to submit a semiannual report if no reportable events occurred during the reporting period.

E. Reports by Manufacturers (Part 803, Subpart E)

35. One comment suggested that manufacturer reporting of ''planned remedial actions'' be deleted. Another comment stated that remedial action often occurs after the reporting deadline, and therefore cannot be included in the report.

Remedial actions taken after a reporting deadline can be submitted to the agency via a supplemental report. The individual adverse event reports required under the final rule, with the exception of circumstances requiring 5-day reports, do not require information

concerning ''planned remedial action'' because supplemental reports and reports of Removals and Corrections will provide the agency with the same information. Remedial actions that are necessary to prevent an unreasonable risk to the public health should be reported as 5-day reports under to § 803.53.

36. Several comments requested that manufacturers be exempt from the requirement of submitting supplemental reports because they are vague and burdensome.

FDA does not agree. The supplemental report does not impose any significant additional burden under § 803.56 because it requires information that a manufacturer was required to submit on its initial report, but did not do so because such information was unknown or unavailable at the time of the report. This information may include, for example, the results of a firm's investigations that may not have been completed at the time of the initial report, or any other required information that the manufacturer becomes aware of after filing a report. The information required is not vague and is clearly specified in §§ 803.52 and 803.56. Both initial and supplemental reports are to be submitted on FDA Form 3500A or electronic equivalent.

Under § 803.15, FDA may also require supplemental information (termed ''request for additional information'' in the final rule) in addition to that required on other reports specified in this part. FDA believes these reports are not unduly burdensome given that they will be required only in instances when the agency determines that the protection of the public health requires such information. In such cases, FDA will specify the type of information needed.

37. One comment stated that the quality of information will decrease if manufacturers are denied access to products.

FDA agrees that manufacturers should evaluate a device problem if they have access to the device. FDA has no authority to require that a device be returned to the manufacturer, but the agency encourages device users, when possible, to permit access or return the device to the manufacturer for evaluation.

38. One comment suggested that manufacturer reports should be sent to user facilities, as well as to FDA.

FDA does not agree. FDA believes that user facilities do not have the appropriate resources or personnel to properly evaluate the public health significance of manufacturers' reports. FDA is the proper entity to evaluate MDR information to determine whether further action, including notification to user facilities or others of device risks, is appropriate.

39. A few comments suggested that the 1984 requirements for manufacturer reporting should be retained to avoid possible confusion caused by the creation of a new standard. Other comments called for the elimination of the monthly reporting requirement.

As discussed earlier in the preamble, subsequent to the issuance of the November 1991 tentative final rule, the 1992 amendments modified the language for reporting standards that apply to user facilities, manufacturers, and importers. The language used in the November 1991 tentative final rule no longer reflected the statutory language, as modified. In this final regulation, FDA has revised the reporting standard to reflect the statutory language added by the 1992 amendments. This statutory reporting standard is substantially similar to the manufacturer reporting standard in the 1984 regulations.

Although the final regulation retains the reporting standard language from the 1984 regulation referenced above, it incorporates many changes from that regulation that are intended to enhance the quality of the reports received and increase the efficiency of FDA's report processing. FDA believes the benefits of changes implemented by the new regulation far outweigh the limited costs for manufacturers to familiarize themselves with the new requirements.

Under the final rule, manufacturers have 30 days after they become aware of an MDR event (with the exception of 5-day reports required by § 803.53) to report the event to FDA. FDA, however, has eliminated the portions of monthly reporting requirements, as proposed, that would have required manufacturers to submit, in addition to individual adverse event report information, an evaluation of adverse events consisting of the results of a statistically-based trend analyses conducted by the manufacturer, a discussion of the underlying methodologies used, a description of any unusual or unexpected events, and a description of remedial action taken.

As proposed, the greatest benefit of the evaluation portions of the monthly report would have been the overview of adverse experience trends it would provide. However, FDA has reevaluated the benefits of these monthly reports, and determined that the agency would incur the costs of data entry regardless of the industry's analysis, and that a computer program for the analysis of the data may be used at a relatively low cost to the agency. Furthermore, the agency anticipates that internal trending analysis will be conducted as part of a manufacturer's CGMP. Any remedial actions presenting an unreasonable risk of substantial harm that are undertaken based upon internal trend analyses are reportable in a 5-day report. Other essential information under the proposed monthly report will also be made available to the agency under the CGMP regulations, and would be made available to FDA under the proposed reports of removals and corrections regulation.

The final regulation will also allow FDA to receive information about reports sooner than the monthly reports as previously proposed. The proposed regulation allowed the manufacturer up to 2 months from the date of an adverse event to submit the monthly report. For example, under the proposed regulation, information received by the manufacturer on January 1 would have been due in a monthly report in March. Under the final regulation, the manufacturer will submit all reports of adverse events within 30 days of the event. Accordingly, under the final rule, information about a reportable event the manufacturer received on January 1, would have to be reported within 30 days.

FDA believes that the timeframes under the final regulation allow sufficient time for completing individual reports because the manufacturer would no longer be required to compile the trend analysis and other evaluations as previously proposed for the monthly reports. FDA also believes that the monthly reporting of individual adverse events in the final rule will achieve FDA's goal of obtaining better quality initial reports from manufacturers by allowing more time to complete the reports than allowed under the 1984 regulation. Nonetheless, the public health will benefit under the final rule because FDA will receive reports of individual events sooner than under the proposed rule.

40. One comment objected to the use of identification (ID) numbers on the reporting form, claiming they are unnecessary.

The agency disagrees. Report ID numbers are essential to FDA's ability to efficiently audit, process, analyze and evaluate MDR data. One of the major deficiencies of the current system is its inability to consistently identify similar devices and other data elements that facilitate the comparison of adverse events. The use of device ID numbers (§§ 803.32(c)(6) and 803.52(c)(6)), user facility and manufacturer report numbers (§§ 803.3(dd) and (o), respectively)), and event codes

(discussed in section IV.F., comment 52 of this document) will facilitate information access and retrieval, and increase the agency's ability to evaluate the information.

41. Comments stated that the requirement for firms to compare events associated with the use of their devices, in order to perform trending studies, should be removed.

The agency agrees in part and has deleted MDR trending reporting requirements, as discussed in section IV.E, comment 39 of this document. Under the prior reporting regulation, FDA has faced difficulties in making an effective determination of the significance of many device failures, because the reports did not include the total number of similar devices in current use or similar failures. Such information, which is required in baseline reports, provides the agency with information regarding the rate of adverse events. An understanding of device failure rates is essential for the agency to determine the level of risk involved, and the appropriate regulatory or other public health response.

42. One comment suggested that instead of the manufacturer indicating to whom the information was reported in the monthly reporting form, it is more important to indicate by whom it was reported.

The agency agrees in part. As noted above, the monthly report requirement, as proposed, has been eliminated; however, information about the initial reporter is required on the individual adverse event MEDWATCH form (FDA Form 3500A or an FDA approved electronic equivalent).

43. One comment objected to the requirement to report problems found in the scientific literature. Another comment objected to reporting anything except problems found in the scientific literature or from research.

Any information which reasonably suggests that a reportable event occurred is important to evaluate the risks of a device, regardless of the source. Although reports in the scientific literature or research are usually not proximate in time to actual events, the information often represents the results of cumulative observations and experience, and provides important information to FDA about device safety and effectiveness.

44. One comment stated that the manufacturer reporting requirements are inappropriate for device sales made directly to the patient.

The agency disagrees. The act does not provide any restrictions or limitations with respect to how the device was marketed. FDA would lose a valuable source of information if manufacturers of devices sold directly to patients, such as many apnea monitors or home use glucose monitors, were excluded from this requirement. All information concerning device-related deaths, serious injuries or other reportable events is equally important, regardless of how the device is marketed.

45. One comment stated that there is no relationship between devices shipped by the manufacturer and those on the market, as the devices may have been altered; therefore, the manufacturer should not be responsible for reporting events involving such devices.

The agency disagrees. Devices in commercial distribution are presumed to be the same devices shipped by the manufacturer. If a manufacturer receives information about an MDR event involving a device that has been altered, the information must nevertheless be forwarded to FDA with an explanation that the device has been altered.

46. One comment suggested that a U.S.-designated agent should be responsible for reporting on behalf of foreign manufacturers.

FDA's November 1991 tentative final rule proposed that U.S.-designated agents should be required to report for foreign manufacturers. This requirement has been adopted in § 803.58.

47. One comment suggested that the manufacturer should disclose the results of event evaluations to distributors of the device.

FDA does not agree. Disclosure of evaluations would be burdensome and may result in release of information that is protected under other laws and regulations. FDA will inform the public, including distributors, of steps necessary to protect the public health if the agency determines such steps are necessary.

F. User Facility and Manufacturer Reporting Forms for Individual Adverse Events (§§ 803.32 and 803.52)

48. Several comments asserted that this section is costly, complicated, overly broad, unacceptably burdensome and not consistent with the SMDA as it requires the reporting of information not required or supported by the SMDA.

The agency disagrees. As stated earlier in the preamble, FDA has adopted the use of a single reporting form for most FDA-regulated products, in order to facilitate the cost-efficient submission of information required by or consistent with the provisions of the SMDA. The agency agrees that the data elements could be simplified and has modified the form after consideration of comments to the February 1993 notice submitted by medical device trade associations and other regulated or affected entities. FDA anticipates that the consolidated form will facilitate the submission, and improve the quality, of adverse event reports. During the initial period of its use, FDA will continue to closely monitor comments and suggestions received from interested parties regarding the reporting form, and will consider additional modifications to further improve the form as the need arises.

49. One comment stated that it will be difficult to find manufacturer reporting forms. Another comment stated that the report form, distributed as a draft to certain interested parties, is not compatible with the use of a word processor.

The MEDWATCH forms (FDA Forms 3500 and 3500A) are already in wide distribution and were published in the Federal Register on June 3, 1993. Information about the MEDWATCH form, and how to obtain it, is provided §§ 803.10 and 803.11.

Although a word processor would be able to fill the fields on FDA Form 3500A with great difficulty, the agency has made provisions for the submission of reports on alternative (electronic) media which would obviate the need for printing the form from a word processor.

50. Several comments were concerned with the adversarial and litigation issues which may be raised by reporting on the forms. In this regard, a few comments suggested deleting all items that require speculation and judgment in reporting, removing the signature block, or adding a disclaimer to the form.

As stated in section IV.C., comment 25 of this document, although FDA is aware that these reports may have some effect on liability, the required information is necessary to implement the agency's statutory responsibilities. Under the statute, user facilities and manufacturers must report adverse events when a device ''may'' have caused or contributed to the event. Accordingly, FDA does not have the discretion to require reporting only when a definitive causal relationship is established. Furthermore, adoption of such a standard would preclude FDA from receiving information that would help the agency assess the risks associated with devices.

FDA has removed the signature block on the form. FDA has provided a disclaimer statement on the reporting form, as discussed in section IV.C., comment 25 of this document.

51. Some comments suggested that the evaluation of events or reports be

left to FDA, the manufacturer or another third party. Other comments suggested that the manufacturer should not be required to verify data or provide data about which it has no knowledge. Other comments suggested that user facilities do not have the appropriate expertise to analyze events or make determinations concerning the reportability of events.

FDA agrees that user facilities should not be required to conduct in-depth analyses of events and has deleted certain requirements regarding information relating to evaluation and testing. User facilities serve principally as conduits of information and thus are required only to fill out information that is known to them. However, the statute and regulations still require user facilities to make an initial determination as to whether an event should be reported under the regulation's criteria. Accordingly, FDA has retained elements that relate to this determination. In § 803.30, FDA explains user facilities' obligations to obtain information about adverse events.

FDA believes that the manufacturer who is responsible for placing a device into interstate commerce is the appropriate entity to initially investigate and evaluate whether, and why, the device may have caused or contributed to a reportable event or malfunctioned and that such malfunction is a reportable event. In order for FDA to determine whether the risk posed by a device necessitates action to protect the public health, the manufacturer is also required to verify data and provide missing information after investigating the event. If after an investigation the information cannot be determined, a manufacturer must explain in the MDR report why the information cannot be obtained.

The agency agrees that an analysis of reports for patterns and trends may be more appropriately conducted by the manufacturer or FDA. FDA will conduct statistical analyses of report information submitted. The agency expects that manufacturers will conduct trend analyses as part of their CGMP.

52. Several comments suggested that numerical event and evaluation codes should not be used on the adverse event reporting form. Other comments stated that the codes lacked accuracy or were insufficient.

The agency disagrees. It is the manufacturer's responsibility to evaluate reports to determine causation. It is reasonable that an evaluation will result in the assignment or identification of failure modes and that these can be communicated to FDA in the form of a structured vocabulary or ''coded'' data. In developing these codes, the agency has used the experience gained from reviewing nearly 400,000 reports submitted since 1984. The use of these codes is essential to the rapid evaluation of device risks and processing of reports by computer. Regardless of whether the codes are specific enough to describe a particular event, the event must be fully described in the narrative section of the reporting form.

The list of codes for use with the final form (FDA Form 3500A or FDA approved electronic equivalent) has been expanded for completeness and modified to improve accuracy. The agency will continue to improve the accuracy of its codes as needed.

53. Various comments suggested that the following elements be removed from the form: Degree of certainty, labelled usage, result of analysis, list of other devices, purchase date, service and maintenance items, event description, and medical status of the patient.

FDA has deleted requirements for user facilities and manufacturers to report service and maintenance information and to state the degree of certainty concerning whether the device caused or contributed to an adverse event. FDA believes the burden of requiring this information would usually outweigh the benefit of assessing the cause of an adverse event. FDA, however, has retained the requirements for manufacturers to report use indications specified in the labeling and device analyses because this information is valuable in determining causation of the event. FDA has deleted the requirements to report these elements for user facilities because the agency believes the manufacturer is the most appropriate source for this information. All user facilities and manufacturers will still be required to provide information regarding concomitant product use, age of the device, event description and certain patient information. FDA believes this information is important to assess adverse events and should be available to user facilities as well as manufacturers.

G. Manufacturer Annual Certification Report (§ 803.57)

54. A few comments stated that this section is redundant, overly broad and burdensome, exceeds the scope of the SMDA and should be deleted. Another comment suggested that certification be limited to events involving class III devices.

The agency cannot agree. Section 519(d) of the act states that each manufacturer required to make reports under section 519(a) of the act must submit annual statements certifying the number of reports filed or that no reports were filed during the previous 12-month period. The provisions of this regulation pertaining to the statutory certification requirement merely explain what information should be contained in the submission. Furthermore, FDA does not agree that certification should be limited to reports about adverse events involving class III devices. Any device, regardless of its classification, can pose serious risks that need to be reported to FDA.

55. Some comments suggested that the certification be limited to the number of reports actually filed, and that liability should attach only in instances of known reporting violations.

The agency disagrees. The purpose of this provision is to ensure reporter compliance with MDR requirements by certifying that all reportable events have been submitted. Such purpose would be thwarted and the certification requirement rendered meaningless if it were limited to simply certifying the number of reports submitted instead of all reportable events known to the certifying entity. The legislative history of section 519(d) of the act references a U.S. General Accounting Office recommendation that the certification state that the reporter ''filed a specific number of reports * * * and that the firm received or became aware of information concerning only these events.'' (H. Rept. 808, 101st Cong., 2d sess. 23 (1990)).

Accordingly, consistent with Congress' intent, FDA is requiring certification that all known reportable events were reported. This requirement does not impose liability for adverse events that are unknown to the reporter because the reporting requirements are triggered only when the reporting entity ''becomes aware'' of a reportable event.

56. Several comments stated that the purpose of certification should be to verify reports, not to certify with absoluteness; therefore the standard should be changed to ''reasonably certain'' and a disclaimer should be added.

The agency disagrees. Section 519(d) of the act specifically states that firms shall certify, not verify their reports. As discussed in the previous paragraph, the purpose of this provision is to ensure that the reporter complies with the law by certifying that it has submitted all the reports it was required to submit. This purpose would not be accomplished by verifying the report.

57. One comment asked for clarification about who is required to certify. Another comment suggested that

the signature block be for the certifier and contractor as well.

The agency agrees with the need for clarification regarding who must certify and has incorporated language in the final rule to address this suggestion. Under the final rule, the president, chief executive officer, executive officer, U.S.-designated agent of a foreign manufacturer or other official most directly responsible for the firm's operations shall certify reports submitted under section 519 of the act.

58. Two comments requested that decentralized certification be allowed for multisite firms. Another comment suggested that centralized reports be used in this situation.

Manufacturers have the option of certifying centrally or on a decentralized basis. Firms deciding to certify centrally must identify the sites covered by the certificate by name and registration number or FDA-assigned identification number.

H. Additional Requirements (§ 803.15)

59. A few comments asserted that these provisions are vague and inappropriate in the absence of a device failure complaint.

The agency disagrees. This provision refers to submission of additional information after an adverse event report has been filed. Accordingly, FDA would not be requesting information in the absence of a device failure or complaint.

60. A few comments objected to the idea of giving FDA unlimited access to data. One comment wanted to restrict FDA's right to copy data and another wanted an appeal process.

FDA does not agree with comments proposing to restrict or limit the agency's access to additional information about adverse events. Under section 704(e) of the act, every person who is required to maintain records under section 519 of the act and every person who is in charge or custody of such records must permit FDA at all reasonable times to have access to and to copy and verify such records. Failure to provide such information may be a violation of section 301 of the act and may subject a person to civil or criminal penalties. Section 704(e) of the act does not limit in any way the types of device records maintained under section 519 of the act that FDA may inspect.

FDA does not agree that the agency should be required to provide an appeal process with respect to requests for additional information. As described above, FDA has statutory authority to require additional information concerning adverse events. Moreover, such information needs to be provided as quickly as possible to enable FDA to take appropriate action.

61. Several comments suggested the regulation be modified to remove the requirement that each reportable event be investigated because in some instances an investigation is unnecessary.

The agency disagrees. All reportable events must be investigated by the manufacturer. The scope of an investigation may vary according to the circumstances; however, an investigation must be able to adequately assess the cause of the event. Sections 820.162 and 820.198 of FDA's CGMP regulations require manufacturers to review, evaluate and investigate any complaint involving the failure of a device to meet its performance specifications or involving injury, death, or any hazard to safety. FDA considers any event that must be reported under this part to be a death, injury, or hazard to safety.

I. Exemptions, Variances, and Alternative Reporting Requirements (§ 803.19)

62. One comment asked that alternative reporting requirements under the current MDR system be incorporated into this regulation. One comment stated that the criteria for alternative reporting should be clarified.

FDA has incorporated the alternative reporting options from the MDR regulation issued in 1984 and expanded the options available in this regulation. Under the final regulation, FDA may grant a written exemption, variance, or alternative to some or all of the requirements when it determines compliance with all MDR requirements is not necessary to protect the public health. Examples of situations include: (1) Devices for which FDA is already aware of a type of malfunction and appropriate action has been taken to protect the public health, such as a recall, removal, or other correction; (2) adverse events that are known and well documented, are occurring at a normal rate, and do not justify the initiation of remedial action; and (3) device events occurring on an infrequent basis or where a longer period for investigation or followup is appropriate and necessary.

In these cases, FDA may impose conditions on its approval of an exemption, variance, or alternative reporting mechanism, including the requirement to report on a less frequent basis than otherwise required or to provide summary data rather than individual reports. The final regulation, upon its effective date, will supersede all previously granted exemptions and variances from the 1984 reporting requirements. The agency intends to review all current exemptions and variances and notify relevant parties about the status of their exemptions and variances and the additional steps that may be necessary to conform to the new requirements effected by this regulation.

63. A few comments stated the criteria for exemption are unclear, especially with respect to investigational device exemptions, and thus create a loophole.

The criteria for exemptions (§ 803.19) are based upon interpretations of the act as to the types of entities Congress intended should be subject to reporting. FDA believes these exemptions are reasonably clear. The exemptions specifically granted under this final regulation are the same as those in the MDR regulation issued in 1984. Devices subject to investigational device exemptions are subject to reporting under the regulations governing that process (parts 812 and 813). The exception to this are devices with investigational device exemptions that are approved for export. These devices are considered to be in commercial distribution and, therefore, subject to MDR.

J. Where To Submit a Report (§ 803.12)

64. There were only two comments on this section. One suggested that ''MDR'' be added to the mailing address. The other recommended the use of electronic reporting.

The agency agrees with these comments. ''MDR'' has been added to the mailing address. In addition, the agency, with prior approval, will accept required reports submitted electronically or on reporting media such as magnetic disc or tape in accordance with § 803.14(a). The agency is in the process of developing standards, guidelines, or procedures for the format to be used with electronic reports. Once available, any electronic reporting system meeting such criteria will be deemed to have prior FDA approval.

K. Written MDR Procedures (§ 803.17)

65. A few comments requested additional guidance on written MDR procedures.

FDA agrees and has developed guidance concerning MDR procedures. Requests for this guidance should be directed to:

Division of Small Manufacturers Assistance (HFZ-220), Office of Health and Industry Programs, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850.

Copies can also be obtained from an electronic docket maintained by the Division of Small Manufacturers Assistance. This system can also be accessed by dialing: 1–800–252–1366 or 301–594–2741. Persons wishing to obtain the guidance document via this system must have a video terminal or a personal computer with communication software (VT emulation) and a modem that can operate at a baud rate of 1200, 2400, 4800, or 9600. Persons wishing to transfer files from the electronic docket must use the KERMIT file transfer protocol.

66. One comment requested that the requirement for staff education be deleted.

The agency agrees and, as stated previously in this preamble, has removed this requirement from the final regulation.

67. One comment objected to the requirement for written procedures. Another comment objected to FDA having access to the firm's procedures.

The agency disagrees. Written procedures are essential to the development of a standard, institutional reporting program. FDA also needs access to such procedures so it can conduct an adequate audit of user facility and manufacturer compliance with MDR.

68. One comment requested clarification of the term ''information that facilitates a submission'' for which documentation and recordkeeping requirements were proposed.

''Information that facilitates the submission [of a semiannual report]'' refers to any information that was evaluated for the purpose of preparing a semiannual report or certification. The regulation has been revised in § 803.17 to clarify this point.

69. One comment stated that these provisions do not address the penalties for failure to comply.

FDA intends to enforce this regulation and will take appropriate action against any firm or facility that does not comply. Violations may result in criminal prosecutions and/or civil remedies such as seizure, injunction, recall, and civil penalties. FDA's enforcement mechanisms and penalties for noncompliance are detailed in the preamble to the November 1991 tentative final rule (56 FR 60024 at 60029 through 60030).

L. Files (§ 803.18)

70. Several comments complained that these requirements are overly broad, burdensome, and beyond the scope of the SMDA.

FDA does not agree. Sections 519 and 701 of the act provide FDA the authority to require user facilities and manufacturers to maintain records to ensure that devices are not adulterated or misbranded. The file requirements are necessary to enable FDA to: (1) Further investigate potentially adulterated or misbranded devices to determine the cause of adverse events; (2) verify information received; and (3) ensure compliance with the regulations. These filing requirements will also enable the reporting entity to more readily identify causes of problems associated with devices so they can take appropriate actions.

71. Several comments expressed concern about public access and a loss of confidentiality stating that these will lead to increased lawsuits and, therefore, decreased reporting. Some comments suggested that only events reportable to FDA be kept in FDA accessible files. Others suggested that confidential materials and irrelevant data be excluded from the files.

FDA has addressed issues related to confidentiality of reports it receives in section IV.C., comment 24 of this document. As stated therein, certain statutory and regulatory protections exist that prevent release of confidential information. FDA does not agree that only events that are ultimately determined to be reportable should be kept in MDR files. FDA must be able to audit files containing events that were determined not reportable to ensure such determinations were correct.

72. A few comments objected to FDA prescribing the method of record retention, preferring the use of individual systems.

The agency disagrees. Effective and uniform regulatory enforcement is better assured by a standardized method of record retention. The agency believes that the method of record retention prescribed in this regulation does not impose an undue burden on the entities required to maintain such records.

73. One comment suggested that separate files be kept for devices and patients.

FDA does not object to a reporting entity maintaining separate files for devices and patients provided that all required information is contained in the MDR files.

74. A few comments stated that a user facility should be required to keep files for a maximum of 2 years, rather than the expected life of the product, because some devices may have unusually long life expectancies.

The agency agrees and has modified this section accordingly. It should be noted that device manufacturers, however, are still required to retain their records for 2 years or a period of time equivalent to the expected life of the device, whichever is greater.

M. Who Must Register and Submit a Device List (Section 807.20)

75. One comment suggested that foreign manufacturers designate a U.S. agent to fulfill the registration and certification requirements. Another comment suggested that foreign manufacturers be permitted to register.

Under § 807.40 (21 CFR 807.40), foreign manufacturers are required to designate a U.S. agent to serve as an official correspondent, as well as to register and list their medical devices distributed in the United States, submit premarket notifications and ensure compliance with the MDR reporting requirements. In § 807.40(a), FDA has changed the time allowed for foreign manufacturers to inform the agency of their designated U.S. agents, or a change in such agents, from 30 days to 5 days. FDA believes this is sufficient time to comply with this requirement.

76. Under § 807.20 (21 CFR 807.20), an owner or operator is required to register its ''name, places of business, and all establishments.'' Under this regulation, FDA has required the registration of all locations that fit within the definition of ''establishment,'' which is defined under § 807.3(a) (21 CFR 807.3(a)) as a location where devices are ''manufactured, assembled, or otherwise processed.'' Although FDA has authority under § 807.20 to require the registration of ''places of business'' that are not ''establishments'' under initial registration and listing regulation that were issued in 1977, the agency previously has declined to exercise this authority.

Under this regulation, FDA will use registration numbers in its data bases to process all manufacturer adverse event reports. Thus FDA must receive reports that originate from locations that may not be ''establishments'' and, therefore, have previously not had registration numbers. Accordingly, FDA is notifying manufacturers that upon the effective date of this final regulation, the agency will exercise its authority under § 807.20, and require all locations that are MDR reporting sites to register because they are ''places of business'' under § 807.20, regardless of whether they fit under the definition of ''establishment.''

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. Intergovernmental Partnership

The agency has analyzed this rulemaking in accordance with the principles and criteria set forth in the Unfunded Mandate Reform Act (Pub. L. 104–4) and Executive Order 12875. Executive Order 12875 states that no agency or executive department shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless the Federal government supplies funds necessary to comply with the mandate, or the agency provides the Office of Management and Budget (OMB) a description of the agency's consultations with affected State, local, and tribal governments, the nature of their concerns, any written communications submitted to the agency by such units of government, and the agency's position supporting the need to issue the regulation containing the mandate. Executive Order 12875 does not apply to this final rule because the regulatory requirements that are applicable to government facilities are required by the provisions of the SMDA, as amended by the 1992 amendments. Moreover, many of the comments the agency received in response to the November 26, 1991, tentative final rule were from Federal, State, or local government facilities or from organizations representing these facilities. The agency believes this final rule is responsive to those comments.

The agency has also examined the consistency of this final rule with the Unfunded Mandate Reform Act. The Unfunded Mandate Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The Unfunded Mandate Reform Act does not apply to this final rule because it will not result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million.

VII. Analysis of Impacts

FDA has examined the impact of the final 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 final rule is consistent with the principles set out in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order.

Many comments stated that the provisions of the rule, as proposed, are overly burdensome, that the costs outweigh the benefits, and that the economic impact was underestimated and misleading. Several comments stated that the provisions constitute too great a burden for FDA, as well as for user facilities, distributors, and manufacturers.

The agency does not agree. For the reasons stated in the preamble, including section IV.A., comment 1 of this document, FDA believes this regulation carefully balances the interests of public health with industry requirements. The agency also does not agree that the economic impact assessment was misleading. The cost projections contained in the proposed rule were based upon the information available to the agency at the time.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The full economic impact assessment is on file at the Dockets Management Branch (address above). This rule is designed to: (1) Implement provisions of the SMDA regarding user facility reporting to FDA of deaths and serious injuries and illnesses related to medical devices and (2) amend the MDR regulations that require manufacturers to report deaths, serious injuries and malfunctions related to medical devices to FDA.

A. Benefits

The legislative history of the SMDA documents reports that device problems that occur in hospitals are rarely reported, despite full scale implementation of the current medical device reporting regulation. A 1986 Government Accounting Office report showed that less than 1 percent of device problems occurring in hospitals were reported directly to FDA. As a result, neither patients nor medical providers would have access to relevant safety information. This final rule requires user facilities to report device-related deaths and serious injuries promptly, and thus it expands the information base of FDA and the manufacturer for early detection of problems associated with medical devices. In addition to manufacturers, those required to report to FDA include device distributors, hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment and diagnostic facilities. As a result of this rule, FDA, patients, and medical providers will have access to relevant safety information not previously available. MDR reports alert FDA to life-threatening and other serious problems with medical devices that are on the market, and FDA then can address these problems through the appropriate mechanisms. Further, when the final rule is in place, FDA will begin to receive denominator, or baseline data, such as the number of a particular device manufactured, distributed, and in use in the previous year. This information will enable FDA to better perform trend analyses and determine the significance of a report or group of reports.

Unfortunately, there are insufficient data available to quantify the benefits of the rule. The primary benefit of this rule is that it provides an early warning of device problems which is then evaluated together with other information and, if appropriate, followed by a corrective action such as the issuance of an FDA Safety Alert, recall, or other action. The agency believes the actions taken as a result of the information provided by MDR reports will provide benefits such as injuries prevented, lives saved, avoidance of hospitalization and outpatient treatment costs, and other possible benefits. Any quantification of benefits would require an estimation of both the number and seriousness of adverse events prevented by actions taken as the result of the evaluation of MDR reports. Thus the agency does not believe benefits can be quantified with any reliable accuracy.

B. Nature of the Economic Impact

This regulation will require certain device user facilities to develop, maintain, and implement procedures for reporting deaths and serious injuries related to medical devices. Some current MDR requirements for manufacturers are being eliminated or reduced, but manufacturers will now be required to develop and maintain written MDR procedures and implement new reporting requirements, including the submission of baseline reports and annual updates and annual certification. In addition, foreign manufacturers will be required to designate an agent in the United States that will be responsible

for submitting required documents for complying with the MDR reporting requirements and for related documentation.

C. Impact Assessment

Based on the cost analysis, the economic impact on manufacturers, U.S. agents for foreign manufacturers, and users of medical devices will not exceed the $100 million threshold established under Executive Order 12866. Annualized one-time costs of about $9.1 million will be incurred by industry for establishing and/or documenting procedures for data collection and reporting. In addition, the annual cost of user reporting is estimated to be $31.7 million, for a total annualized industry cost of $40.8 million.

An estimated 51,000 additional death and injury reports are expected as a result of adverse incidents that must be reported under this rule. This is in line with the Congressional Budget Office estimate of 40,000 reports. These incidents generate investigation, data analyses and summaries, and additional reporting requirements. Based on the above estimates, this translates to an average cost per adverse report of $799.

1. User Facility Costs

Table 1 summarizes the total incremental initial and recurring costs of the reporting requirements for user facilities. These estimates are based on cost data from the Center for Devices and Radiological Health's draft report to Congress, entitled ''The Evaluation of Medical Device User Facility Reporting Requirements'', 1994. Components of one-time costs include developing procedures and modifying forms for reporting and training personnel. The most significant one-time costs are $3.0 million for developing procedures and $2.6 million for ''other'' startup costs. The total annualized one-time cost to user facilities is estimated to be $8.9 million.

TABLE 1.—TOTAL COSTS TO USER FACILITIES BY TYPE OF FACILITY

[millions of dollars]

Facility type	Number of facilities	One-time cost	Annualized [1]	Annual	Total
Hospitals	6,738	7.9	1.9	7.0	8.9
Nursing homes	25,648	12.7	3.1	5.3	8.4
Ambulatory surgical	1,300	0.7	0.2	0.7	0.9
Outpatient diagnostic	7,578	3.3	0.8	0.7	1.5
Outpatient treatment	4,041	2.5	0.6	1.4	2.0
Emergency medical service	15,600	9.5	2.3	4.1	6.4
Total	60,905	36.6	8.9	19.3	28.2

[1] Annualized over 5 years at a discount rate of 7 percent. (Numbers may not add due to rounding.)

Annual costs include investigation of the event, reporting the event, preparing semiannual reports, and related computer, and other costs. The total annual cost to user facilities is $19.3 million. Hospitals and nursing homes incur about two- thirds of this cost at $7.0 million and $5.3 million, respectively. Major components of annual cost include $5.4 million to investigate and to prepare the initial reports. Semiannual reports are required only if a facility has a reportable event, and are estimated to cost $59,000. The most significant costs are for computer and other costs at $14.8 million. The total first-year costs to user facilities is $28.2 million.

2. Manufacturer and U.S. Agent for Foreign Manufacturer Costs

Manufacturers are currently required under the current good manufacturing practices regulation to investigate complaints and analyze device failures. Manufacturers will now be required to document and maintain their MDR related procedures. The vast majority of manufacturers already have such written procedures in place. Incremental one-time costs for documenting these procedures will be $105 thousand. Foreign manufacturers will incur additional one-time costs of $662 thousand to select an agent and notify FDA. Annualized at 7 percent over 5 years, this translates to $187 thousand per year.

Manufacturers must also comply with the new reporting requirements. Table 2 presents the expected annual cost of reporting by type of facility and type of report. The major components of annual cost include the followup and reporting of additional adverse medical device events and the submission of baseline reports. MDR followup on user and distributor reports and completion of information on Form 3500A is expected to cost manufacturers $11.1 million annually for the estimated 51,000 reports from user facilities and distributors. The cost of 8,000 new baseline reports and 12,000 updates will be $598 thousand.

TABLE 2.—ANNUAL COST OF REPORTING

Type of facility	Type of report	Cost (dollars)	Number of reports	Total cost ($000)
All manufacturers	Followup MDR's from user/distributor facilities	217.60	51,000	11,098
	Baseline report	54.40	8,000	435
	Baseline update	13.60	12,000	163
	Five-day report	233.60	100	23
	Annual certification	26.00	12,145	316
Foreign only	Fees for MDR reporting	.....	.....	134
	Fees for 510(k) filing	110.08	510	56
(All manufacturers-Total)	.....	.....	.....	12,225
U.S. agents for foreign manufacturers	Register and list	16.64	4,812	80

TABLE 2.—ANNUAL COST OF REPORTING—Continued

Type of facility	Type of report	Cost (dollars)	Number of reports	Total cost ($000)
	Notify and document MDR's	7.80	5,750	45
(U.S. agents for foreign manufacturers-Total).				125
Total				12,350

In addition, domestic manufacturers and U.S. agents for foreign manufacturers will be required to certify annually the number of reportable events that have occurred. This is a formality in terms of data collection and reporting and is expected to cost $316 thousand. Foreign manufacturers will incur a fee of $190 thousand for reporting services conducted by their U.S. agents. Annual costs to U.S. agents are $125 thousand for registering and listing their foreign manufacturers establishments and products and for complying with reporting requirements. Previously, foreign manufacturers were required to submit premarket notifications or have their initial distributor in the United States do so. Now, U.S. agents will be required to submit premarket notifications for foreign manufacturers. This represents a transfer of existing requirements and therefore, no increase in cost.

3. Total Cost to Industry

Table 3 presents a summary of the total annual costs to industry. Costs are $28.2 million for user facilities, $12.4 million for manufacturers, and $125 thousand for U.S. agents for foreign manufacturers, for a total annual cost to industry of $40.8 million.

TABLE 3.—TOTAL ANNUALIZED COST TO INDUSTRY

[in millions of dollars]

Industry	One-time [1]	Annual	Total
User Facilities	8.93	19.31	28.24
Manufacturers	0.19	12.22	12.41

TABLE 3.—TOTAL ANNUALIZED COST TO INDUSTRY—Continued

[in millions of dollars]

Industry	One-time [1]	Annual	Total
U.S. agents for foreign manufacturers		0.13	0.13
Total	9.12	31.66	40.77

[1] Annualized over 5 years at a discount rate of 7 percent. (Numbers may not add due to rounding.)

4. Small Business Impacts

There is little likelihood that there will be a significant impact on small facilities. The one-time start-up costs range from $437 to $1,629 for user facilities, depending on facility type. Annualized at 7 percent for 5 years, these costs range from $107 to $397 for user facilities. In addition, estimates of the annual number of additional medical device events attributable to this regulation are about 51,000. Because there are nearly 61,000 user facilities, this averages out to about .8 serious events per facility attributable to the user reporting rule at an annual cost of $400 per event.

Similarly, small businesses in the medical device manufacturing industry will not be significantly affected, although the industry has a substantial number of small facilities, with about 65 percent of the establishments having fewer than 50 employees. No more than 22 percent of the anticipated $12 million annual impact of these regulations on manufacturers would be attributable to small establishments, or about $2.7 million per year. Because there are about 7,300 small medical device establishments (including foreign manufacturers), the average impact on one small establishment should be less than $338 annually. Assuming that all of the approximately 4,800 U.S. agents are small, on average, the $125 thousand impact on any one establishment would be $26 annually.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collections which are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The title, description, and respondent description of the information collections are shown below and an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Reporting and recordkeeping requirements for user facilities and manufacturers of medical devices under the Safe Medical Devices Act of 1990 (SMDA) and the Medical Device Amendments of 1992 (1992 Amendments)(General requirements).

Description: This regulation implements provisions of the SMDA and the 1992 amendments regarding user facility reporting of deaths and serious injuries related to medical devices. This regulation also amends regulations regarding device manufacturer reporting of deaths, serious injuries, and certain malfunctions related to medical devices. The purpose of these changes is to improve the protection of the public health while also reducing the regulatory burden on reporting entities.

Description of Respondents: Businesses or other for profit organizations, nonprofit organizations, Federal, State, and local governments.

TABLE 4.—ESTIMATED ANNUAL BURDEN FOR REPORTING

CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
803.19	100	1.0	100	3.0	300

TABLE 4.—ESTIMATED ANNUAL BURDEN FOR REPORTING—Continued

CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
803.30(a)	700	1.0	700	3.0	2,100
803.30(b)	20,000	1.5	30,000	3.0	90,000
803.33	2,000	1.0	2,000	1.0	2,000
803.50	1,250	40.0	50,000	0.5	25,000
803.53	100	1.0	100	0.5	50
803.55	1,000	20.0	20,000	[1] 1.1	22,000
803.56	500	20.0	10,000	1.0	10,000
803.57	12,000	1.0	12,000	1.0	12,000
803.58	5,000	1.0	5,000	1.0	5,000
Total					168,450

[1] Although an initial submission will take an estimated 2 hours to complete, the annual update will take only .5 hours. The average hours per response is therefore 1.1, as reflected here.

TABLE 5.—ESTIMATED ANNUAL BURDEN FOR RECORDKEEPING

CFR section	Number of record-keepers	Hours per record-keeper	Total hours
803.18(c)	36,639	0.25	9,160
803.18(e)	625	16.00	10,000
Total			19,160

Although the November 26, 1991, tentative final rule provided a 60-day comment period (extended to 90 days in the January 24, 1992, Federal Register, 57 FR 2861), and this final rule is based on the comments received, FDA Form 3419 (semiannual report), FDA Form 3417 (baseline report), and FDA Form 3381 (annual certification) have not been previously available to OMB or the public for review. Therefore, as required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted a copy of this final rule to OMB for its review of these information collection requirements.

In addition, the agency solicits public comment on the information collection requirements in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Individuals and organizations may submit comments on the information collection requirements by January 10, 1996, and should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., rm. 10235, 725 17th St. NW., Washington, DC 20503, Attention: Desk Officer for FDA.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. This final rule contains information collection requirements which have been approved under OMB no. 0910–0059 and which expires on March 31, 1996. FDA will publish a notice in the Federal Register prior to the effective date of this final rule of OMB's decision to approve, modify or disapprove the information collection requirements.

List of Subjects

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, chapter I of title 21 of the Code of Federal Regulations is amended as follows:

1. Part 803 is revised to read as follows:

PART 803—MEDICAL DEVICE REPORTING

Subpart A—General Provisions

Sec.

803.1 Scope.
803.3 Definitions.
803.9 Public availability of reports.
803.10 General description of reports required from user facilities and manufacturers.
803.11 Obtaining the forms.
803.12 Where to submit reports.
803.13 English reporting requirement.
803.14 Electronic reporting.
803.15 Requests for additional information.
803.16 Disclaimers.
803.17 Written MDR procedures.
803.18 Files.
803.19 Exemptions, variances, and alternative reporting requirements.

Subpart B—Generally Applicable Requirements for Individual Adverse Event Reports

803.20 How to report.
803.21 Reporting codes.
803.22 When not to file.

Subpart C—User Facility Reporting Requirements

803.30 Individual adverse event reports; user facilities.
803.32 Individual adverse event report data elements.
803.33 Semiannual reports.

Subpart D—[Reserved]

Subpart E—Manufacturer Reporting Requirements

803.50 Individual adverse event reports; manufacturers.
803.52 Individual adverse event report data elements.
803.53 Five-day reports.
803.55 Baseline reports.
803.56 Supplemental reports.
803.57 Annual certification.
803.58 Foreign manufacturers.

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

Subpart A—General Provisions

§ 803.1 Scope.

(a) This part establishes requirements for medical device reporting. Under this part, device user facilities and manufacturers must report deaths and serious injuries to which a device has or may have caused or contributed, and must establish and maintain adverse event files. Manufacturers are also required to report certain device malfunctions and submit an annual report to FDA certifying that the correct number of medical device reports were filed during the previous 12-month period or, alternatively, that no reports were required during that same time period. These reports will assist FDA in protecting the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use.

(b) This part supplements and does not supersede other provisions of this subchapter, including the provisions of part 820 of this chapter.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of title 21, unless otherwise noted.

§ 803.3 Definitions.

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) *Ambulatory surgical facility (ASF)* means a distinct entity that operates for the primary purpose of furnishing same day outpatient surgical services to patients. An ASF may be either an independent entity (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure or control of an entity). An ASF is subject to this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or regardless of whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the ASF must report that event regardless of the nature or location of the medical service provided by the ASF.

(c) *Become aware* means that an employee of the entity required to report has acquired information reasonably suggesting a reportable adverse event has occurred. Device user facilities are considered to have ''become aware'' when medical personnel, as defined in paragraph (r) of this section, who are employed by or otherwise formally affiliated with the facility, acquire such information about a reportable event. Manufacturers are considered to have ''become aware'' of an event when:

(1) Any employee becomes aware of a reportable event that is required to be reported within 30 days, or that is required to be reported within 5 days pursuant to a written request from FDA under 803.53(b); and

(2) Any employee, who is a person with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or a person whose duties relate to the collection and reporting of adverse events, becomes aware that a reportable MDR event or events, from any information, including any trend analysis, necessitate remedial action to prevent an unreasonable risk of substantial harm to the public health.

(d) *Caused or contributed* means that a death or serious injury was or may have been attributed to a medical device, or that a medical device was or may have been a factor in a death or serious injury, including events occurring as a result of:

(1) Failure;
(2) Malfunction;
(3) Improper or inadequate design;
(4) Manufacture;
(5) Labeling; or
(6) User error.

(e) (1) *Device family* means a group of one or more devices manufactured by or for the same manufacturer and having the same:

(i) Basic design and performance characteristics related to device safety and effectiveness,

(ii) Intended use and function, and

(iii) Device classification and product code.

(2) Devices that differ only in minor ways not related to safety or effectiveness can be considered to be in the same device family. Factors such as brand name and common name of the device and whether the devices were introduced into commercial distribution under the same 510(k) or premarket approval application (PMA), may be considered in grouping products into device families.

(f) *Device user facility* means a hospital, ambulatory surgical facility, nursing home, outpatient diagnostic facility, or outpatient treatment facility as defined in paragraphs (l), (b), (s), (t), and (u), respectively, of this section, which is not a ''physician's office,'' as defined in paragraph (w) of this section. School nurse offices and employee health units are not device user facilities.

(g) [Reserved]

(h) [Reserved]

(i) *Expected life* of a device (required on the manufacturer's baseline report) means the time that a device is expected to remain functional after it is placed into use. Certain implanted devices have specified ''end of life'' (EOL) dates. Other devices are not labeled as to their respective EOL, but are expected to remain operational through maintenance, repair, upgrades, etc., for an estimated period of time.

(j) *FDA* means the Food and Drug Administration.

(k) *Five-day report* means a medical device report that must be submitted by a manufacturer to FDA pursuant to § 803.53, on FDA Form 3500A or electronic equivalent as approved under § 803.14, within 5 work days.

(l) *Hospital* means a distinct entity that operates for the primary purpose of providing diagnostic, therapeutic (medical, occupational, speech, physical, etc.), surgical and other patient services for specific and general medical conditions. Hospitals include general, chronic disease, rehabilitative, psychiatric, and other special-purpose facilities. A hospital may be either independent (e.g., not a part of a provider of services or any other facility) or may be operated by another medical entity (e.g., under the common ownership, licensure or control of another entity). A hospital is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the hospital must report that event regardless of the nature or location of the medical service provided by the hospital.

(m) *Malfunction* means the failure of a device to meet its performance specifications or otherwise perform as intended. Performance specifications include all claims made in the labeling for the device. The intended

performance of a device refers to the intended use for which the device is labeled or marketed, as defined in § 801.4 of this chapter.

(n) *Manufacturer* means any person who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedure. The term includes any person who:

(1) Repackages or otherwise changes the container, wrapper or labeling of a device in furtherance of the distribution of the device from the original place of manufacture;

(2) Initiates specifications for devices that are manufactured by a second party for subsequent distribution by the person initiating the specifications;

(3) Manufactures components or accessories which are devices that are ready to be used and are intended to be commercially distributed and intended to be used as is, or are processed by a licensed practitioner or other qualified person to meet the needs of a particular patient; or

(4) Is the U.S. agent of a foreign manufacturer.

(o) *Manufacturer report number* means the number that uniquely identifies each individual adverse event report submitted by a manufacturer. This number consists of three parts as follows:

(1) The FDA registration number for the manufacturing site of the reported device. (If the manufacturing site does not have a registration number, FDA will assign a temporary number until the site is officially registered. The manufacturer will be informed of the temporary number.);

(2) The four-digit calendar year in which the report is submitted; and

(3) The five-digit sequence number of the reports submitted during the year, starting with 00001. (For example, the complete number will appear 1234567–1995–00001.)

(p) *MDR* means medical device report.

(q) *MDR reportable event* (or *reportable event*) means:

(1) An event about which user facilities become aware of information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury; or

(2) An event about which manufacturers have received or become aware of information that reasonably suggests that one of their marketed devices:

(i) May have caused or contributed to a death or serious injury; or

(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

(r) *Medical personnel,* as used in this part, means an individual who:

(1) Is licensed, registered, or certified by a State, territory, or other governing body, to administer health care;

(2) Has received a diploma or a degree in a professional or scientific discipline;

(3) Is an employee responsible for receiving medical complaints or adverse event reports; or

(4) Is a supervisor of such persons.

(s)(1) *Nursing home* means an independent entity (i.e., not a part of a provider of services or any other facility) or one operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity) that operates for the primary purpose of providing:

(i) Skilled nursing care and related services for persons who require medical or nursing care;

(ii) Hospice care to the terminally ill; or

(iii) Services for the rehabilitation of the injured, disabled, or sick.

(2) A nursing home is subject to this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the nursing home must report that event regardless of the nature, or location of the medical service provided by the nursing home.

(t)(1) *Outpatient diagnostic facility* means a distinct entity that:

(i) Operates for the primary purpose of conducting medical diagnostic tests on patients;

(ii) Does not assume ongoing responsibility for patient care; and

(iii) Provides its services for use by other medical personnel. (Examples include diagnostic radiography, mammography, ultrasonography, electrocardiography, magnetic resonance imaging, computerized axial tomography and in-vitro testing).

(2) An outpatient diagnostic facility may be either independent (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity). An outpatient diagnostic facility is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the outpatient diagnostic facility must report that event regardless of the nature or location of the medical service provided by the outpatient diagnostic facility.

(u) (1) *Outpatient treatment facility* means a distinct entity that operates for the primary purpose of providing nonsurgical therapeutic (medical, occupational, or physical) care on an outpatient basis or home health care setting. Outpatient treatment facilities include ambulance providers, rescue services, and home health care groups. Examples of services provided by outpatient treatment facilities include: Cardiac defibrillation, chemotherapy, radiotherapy, pain control, dialysis, speech or physical therapy, and treatment for substance abuse.

(2) An outpatient treatment facility may be either independent (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity). An outpatient treatment facility is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the outpatient treatment facility must report that event regardless of the nature or location of the medical service provided by the outpatient treatment facility.

(v) *Patient of the facility* means any individual who is being diagnosed or treated and/or receiving medical care at or under the control or authority of the facility. For the purposes of this part, the definition encompasses employees of the facility or individuals affiliated with the facility, who in the course of their duties suffer a device-related death or serious injury that has or may have been caused or contributed to by a device used at the facility.

(w) *Physician's office* means a facility that operates as the office of a physician or other health care professional (e.g., dentist, chiropractor, optometrist, nurse practitioner, school nurse offices, school clinics, employee health clinics, or free-standing care units) for the primary purpose of examination, evaluation, and treatment or referral of patients. A physician's office may be independent, a group practice, or part of a Health Maintenance Organization.

(x) [Reserved]

(y) *Remedial action* means, for the purposes of this subpart, any action other than routine maintenance or servicing, of a device where such action is necessary to prevent recurrence of a reportable event.

(z) [Reserved]

(aa)(1) *Serious injury* means an injury or illness that:

(i) Is life-threatening;

(ii) Results in permanent impairment of a body function or permanent damage to body structure; or

(iii) Necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

(2) *Permanent* means, for purposes of this subpart, irreversible impairment or damage to a body structure or function, excluding trivial impairment or damage.

(bb) *Shelf life*, as required on the manufacturer's baseline report, means the maximum time a device will remain functional from the date of manufacture until it is used in patient care. Some devices have an expiration date on their labeling indicating the maximum time they can be stored before losing their ability to perform their intended function.

(cc) [Reserved]

(dd)(1) *User facility report number* means the number that uniquely identifies each report submitted by a user facility to manufacturers and FDA. This number consists of three parts as follows:

(i) The user facility's 10-digit Health Care Financing Administration (HCFA) number (if the HCFA number has fewer than 10 digits, fill the remaining spaces with zeros);

(ii) The four-digit calendar year in which the report is submitted; and

(iii) The four-digit sequence number of the reports submitted for the year, starting with 0001. (For example, a complete number will appear as follows: 1234560000–1995–0001.)

(2) If a facility has more than one HCFA number, it must select one that will be used for all of its MDR reports. If a facility has no HCFA number, it should use all zeros in the appropriate space in its initial report (e.g., 0000000000–1995–0001) and FDA will assign a number for future use. The number assigned will be used in FDA's record of that report and in any correspondence with the user facility. All zeros should be used subsequent to the first report if the user does not receive FDA's assigned number before the next report is submitted. If a facility has multiple sites, the primary site can report centrally and use one reporting number for all sites if the primary site provides the name, address and HCFA number for each respective site.

(ee) *Work day* means Monday through Friday, excluding Federal holidays.

§ 803.9 Public availability of reports.

(a) Any report, including any FDA record of a telephone report, submitted under this part is available for public disclosure in accordance with part 20 of this chapter.

(b) Before public disclosure of a report, FDA will delete from the report:

(1) Any information that constitutes trade secret or confidential commercial or financial information under § 20.61 of this chapter;

(2) Any personal, medical, and similar information (including the serial number of implanted devices), which would constitute an invasion of personal privacy under § 20.63 of this chapter. FDA will disclose to a patient who requests a report, all the information in the report concerning that patient, as provided in § 20.61 of this chapter; and

(3) Any names and other identifying information of a third party voluntarily submitting an adverse event report.

(c) FDA may not disclose the identity of a device user facility which makes a report under this part except in connection with:

(1) An action brought to enforce section 301(q) of the act, including the failure or refusal to furnish material or information required by section 519 of the act;

(2) A communication to a manufacturer of a device which is the subject of a report required by a user facility under § 803.30;

(3) A disclosure relating to a manufacturer or distributor adverse event report that is required under section 519(a) of the act; or

(4) A disclosure to employees of the Department of Health and Human Services, to the Department of Justice, or to the duly authorized committees and subcommittees of the Congress.

§ 803.10 General description of reports required from user facilities and manufacturers.

(a) *Device user facilities.* User facilities must submit the following reports, which are described more fully in subpart C of this part.

(1) User facilities must submit MDR reports of individual adverse events within 10 days after the user facility becomes aware of an MDR reportable event as described in §§ 803.30 and 803.32.

(i) User facilities must submit reports of device-related deaths to FDA and to the manufacturer, if known.

(ii) User facilities must submit reports of device-related serious injuries to manufacturers, or to FDA, if the manufacturer is unknown.

(2) User facilities must submit semiannual reports as described in § 803.33.

(b) [Reserved]

(c) *Device manufacturers.* Manufacturers must submit the following reports as described more fully in subpart E of this part:

(1) MDR reports of individual adverse events within 30 days after the manufacturer becomes aware of a reportable death, serious injury, or malfunction as described in §§ 803.50 and 803.52.

(2) MDR reports of individual adverse events within 5 days of:

(i) Becoming aware that a reportable MDR event requires remedial action to prevent an unreasonable risk of substantial harm to the public health or,

(ii) Becoming aware of an MDR reportable event for which FDA has made a written request, as described in § 803.53.

(3) Annual baseline reports as described in § 803.55.

(4) Supplemental reports if they obtain information that was not provided in an initial report as described in § 803.56.

(5) Annual certification to FDA of the number of MDR reports filed during the preceding year as described in § 803.57.

§ 803.11 Obtaining the forms.

User facilities and manufacturers must submit all reports of individual adverse events on FDA Form 3500A (MEDWATCH form) or in an electronic equivalent as approved under § 803.14. This form and all other forms referenced in this section can also be obtained from the Consolidated Forms and Publications Office, Washington Commerce Center, 3222 Hubbard Rd., Landover, MD 20785, or from the Division of Small Manufacturers Assistance, Office of Health and Industry Programs, Center for Devices and Radiological Health, 1350 Piccard Dr. (HFZ–220), Rockville, MD 20850, telephone facsimile (FAX) 301–443–8818. FDA Form 3500A may also be obtained from the Food and Drug Administration, MEDWATCH (HF–2), 5600 Fishers Lane, rm. 9–57, Rockville, MD 20850, 301–443–0117.

§ 803.12 Where to submit reports.

(a) Any written report or additional information required under this part shall be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Medical Device Reporting, PO Box 3002, Rockville, MD 20847–3002.

(b) Each report and its envelope shall be specifically identified, e.g., ''User Facility Report,'' ''SemiAnnual Report,'' ''Manufacturer Report,'' ''5-Day Report,'' ''Baseline Report,'' etc.

(c) If an entity is confronted with a public health emergency, this can be brought to FDA's attention by contacting the FDA Emergency Operations Branch

(HFC–162), Office of Regional Operations, at 301–443–1240, and should be followed by the submission of a FAX report to 301–443–3757.

(d) A voluntary telephone report may be submitted to, or information regarding voluntary reporting may be obtained from, the MEDWATCH hotline at 800–FDA–1088.

§ 803.13 English reporting requirement.

(a) All reports required in this part which are submitted in writing or electronic equivalent shall be submitted to FDA in English.

(b) All reports required in this part which are submitted on an electronic medium shall be submitted to FDA in a manner consistent with § 803.14.

§ 803.14 Electronic reporting.

(a) Any report required by this part may be submitted electronically with prior written consent from FDA. Such consent is revocable. Electronic report submissions include alternative reporting media (magnetic tape, disc, etc.) and computer-to-computer communication.

(b) Any electronic report meeting electronic reporting standards, guidelines, or other procedures developed by the agency for MDR reporting will be deemed to have prior approval for use.

§ 803.15 Requests for additional information.

(a) FDA may determine that protection of the public health requires additional or clarifying information for medical device reports submitted to FDA under this part. In these instances, and in cases when the additional information is beyond the scope of FDA reporting forms or is not readily accessible, the agency will notify the reporting entity in writing of the additional information that is required.

(b) Any request under this section shall state the reason or purpose for which the information is being requested, specify the date that the information is to be submitted and clearly relate the request to a reported event. All verbal requests will be confirmed in writing by the agency.

§ 803.16 Disclaimers.

A report or other information submitted by a reporting entity under this part, and any release by FDA of that report or information, does not necessarily reflect a conclusion by the party submitting the report or by FDA that the report or information constitutes an admission that the device, or the reporting entity or its employees, caused or contributed to the reportable event. The reporting entity need not admit and may deny that the report or information submitted under this part constitutes an admission that the device, the party submitting the report, or employees thereof, caused or contributed to a reportable event.

§ 803.17 Written MDR procedures.

User facilities and manufacturers shall develop, maintain, and implement written MDR procedures for the following:

(a) Internal systems that provide for:

(1) Timely and effective identification, communication, and evaluation of events that may be subject to medical device reporting requirements;

(2) A standardized review process/procedure for determining when an event meets the criteria for reporting under this part; and

(3) Timely transmission of complete medical device reports to FDA and/or manufacturers;

(b) Documentation and recordkeeping requirements for:

(1) Information that was evaluated to determine if an event was reportable;

(2) All medical device reports and information submitted to FDA and manufacturers;

(3) Any information that was evaluated for the purpose of preparing the submission of semiannual reports or certification; and

(4) Systems that ensure access to information that facilitates timely followup and inspection by FDA.

§ 803.18 Files.

(a) User facilities and manufacturers shall establish and maintain MDR event files. All MDR event files shall be prominently identified as such and filed to facilitate timely access.

(b) (1) For purposes of this part, ''MDR event files'' are written or electronic files maintained by user facilities and manufacturers. MDR event files may incorporate references to other information, e.g., medical records, patient files, engineering reports, etc., in lieu of copying and maintaining duplicates in this file. MDR event files must contain:

(i) Information in the possession of the reporting entity or references to information related to the adverse event, including all documentation of the entity's deliberations and decisionmaking processes used to determine if a device-related death, serious injury, or malfunction was or was not reportable under this part.

(ii) Copies of all MDR forms, as required by this part, and other information related to the event that was submitted to FDA and other entities (e.g., a distributor or manufacturer).

(2) User facilities and manufacturers shall permit any authorized FDA employee during all reasonable times to access, to copy, and to verify the records required by this part.

(c) User facilities shall retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event. Manufacturers shall retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event or a period of time equivalent to the expected life of the device, whichever is greater. MDR event files must be maintained for the time periods described in this paragraph even if the device is no longer distributed.

(d) [Reserved]

(e) The manufacturer may maintain MDR event files as part of its complaint file, under § 820.198 of this chapter, provided that such records are prominently identified as MDR reportable events. A report submitted under this subpart A shall not be considered to comply with this part unless the event has been evaluated in accordance with the requirements of §§ 820.162 and 820.198 of this chapter. MDR files shall contain an explanation of why any information required by this part was not submitted or could not be obtained. The results of the evaluation of each event are to be documented and maintained in the manufacturer's MDR event file.

§ 803.19 Exemptions, variances, and alternative reporting requirements.

(a) The following persons are exempt from the reporting requirements under this part.

(1) An individual who is a licensed practitioner who prescribes or administers devices intended for use in humans and who manufactures or imports devices solely for use in diagnosing and treating persons with whom the practitioner has a ''physician-patient'' relationship.

(2) An individual who manufactures devices intended for use in humans solely for such person's use in research or teaching and not for sale, including any person who is subject to alternative reporting requirements under the investigational device exemption regulations, parts 812 and 813 of this chapter, which require reporting of all adverse device effects.

(3) Dental laboratories, or optical laboratories.

(b) Manufacturers or user facilities may request exemptions or variances from any or all of the reporting requirements in this part. The request shall be in writing and include information necessary to identify the

firm and device, a complete statement of the request for exemption, variance, or alternative reporting, and an explanation why the request is justified.

(c) FDA may grant in writing, to a manufacturer or user facility, an exemption, variance or alternative from, or to, any or all of the reporting requirements in this part and may change the frequency of reporting to quarterly, semiannually, annually, or other appropriate time period. These modifications may be initiated by a request as specified in this section, or at the discretion of FDA. When granting such modifications, FDA may impose other reporting requirements to ensure the protection of public health.

(d) FDA may revoke or modify in writing an exemption, variance, or alternative reporting requirements if FDA determines that protection of the public health justifies the modification or a return to the requirements as stated in this part.

(e) Firms granted a reporting modification by FDA shall provide any reports or information required by that approval. The conditions of the approval will replace and supersede the reporting requirement specified in this part until such time that FDA revokes or modifies the alternative reporting requirements in accordance with paragraph (d) of this section.

Subpart B—Generally Applicable Requirements for Individual Adverse Event Reports

§ 803.20 How to report.

(a) *Description of form*. There are two versions of the MEDWATCH form for individual reports of adverse events. FDA Form 3500 is available for use by health professionals and consumers for the submission of voluntary reports regarding FDA-regulated products. FDA Form 3500A is the mandatory reporting form to be used for submitting reports by user facilities and manufacturers of FDA-regulated products. The form has sections that must be completed by all reporters and other sections that must be completed only by the user facility or manufacturer.

(1) The front of FDA Form 3500A is to be filled out by all reporters. The front of the form requests information regarding the patient, the event, the device and ''initial reporter'' (i.e., the first person or entity that submitted the information to the user facility, manufacturer, or distributor).

(2) The back part of the form contains sections to be completed by user facilities and manufacturers. User facilities must complete section F; device manufacturers must complete sections G and H. Manufacturers are not required to recopy information submitted to them on a Form 3500A unless the information is being copied onto an electronic medium. If the manufacturer corrects or supplies information missing from the other reporter's 3500A form, it should attach a copy of that form to the manufacturer's report form. If the information from the other reporter's 3500A form is complete and correct, the manufacturer can fill in the remaining information on the same form.

(b) *Reporting standards*. (1) User facilities are required to submit MDR reports to:

(i) The device manufacturer and to FDA within 10 days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to a death; or

(ii) The manufacturer within 10 days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to a serious injury. Such reports shall be submitted to FDA if the device manufacturer is not known.

(2) [Reserved]

(3) Manufacturers are required to submit MDR reports to FDA:

(i) Within 30 days of becoming aware of information that reasonably suggests that a device may have caused or contributed to a death or serious injury; or

(ii) Within 30 days of becoming aware of information that reasonably suggests a device has malfunctioned and that device or a similar device marketed by the manufacturer would be likely to cause a death or serious injury if the malfunction were to recur; or

(iii) Within 5 days if required by § 803.53.

(c) *Information that reasonably suggests a reportable event occurred* (1) Information that reasonably suggests that a device has or may have caused or contributed to an MDR reportable event (i.e., death, serious injury, and, for manufacturers, a malfunction that would be likely to cause or contribute to a death or serious injury if the malfunction were to recur) includes any information, such as professional, scientific or medical facts and observations or opinions, that would reasonably suggest that a device has caused or may have caused or contributed to a reportable event.

(2) Entities required to report under this part do not have to report adverse events for which there is information that would cause a person who is qualified to make a medical judgment (e.g., a physician, nurse, risk manager, or biomedical engineer) to reach a reasonable conclusion that a device did not cause or contribute to a death or serious injury, or that a malfunction would not be likely to cause or contribute to a death or serious injury if it were to recur. Information which leads the qualified person to determine that a device-related event is or is not reportable must be contained in the MDR event files, as described in § 803.18.

§ 803.21 Reporting codes.

(a) FDA has developed a MEDWATCH Mandatory Reporting Form Coding Manual for use with medical device reports. This manual contains codes for hundreds of adverse events for use with FDA Form 3500A. The coding manual is available from the Division of Small Manufacturer Assistance, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850, FAX 301–443–8818.

(b) FDA may use additional coding of information on the reporting forms or modify the existing codes on an ad hoc or generic basis. In such cases, FDA will ensure that the new coding information is available to all reporters.

§ 803.22 When not to file.

(a) Only one medical device report from the user facility or manufacturer is required under this part if the reporting entity becomes aware of information from multiple sources regarding the same patient and same event.

(b) A medical device report that would otherwise be required under this section is not required if:

(1) The user facility or manufacturer determines that the information received is erroneous in that a device-related adverse event did not occur. Documentation of such reports shall be retained in MDR files for time periods specified in § 803.18.

(2) The manufacturer determines that the device was manufactured by another manufacturer. Any reportable event information that is erroneously sent to a manufacturer shall be forwarded to FDA, with a cover letter explaining that the device in question was not manufactured by that firm.

Subpart C—User Facility Reporting Requirements

§ 803.30 Individual adverse event reports; user facilities.

(a) *Reporting standard*. A user facility shall submit the following reports to the manufacturer or to FDA, or both, as specified below:

(1) *Reports of death*. Whenever a user facility receives or otherwise becomes aware of information, from any source, that reasonably suggests that a device

has or may have caused or contributed to the death of a patient of the facility, the facility shall as soon as practicable, but not later than 10 work days after becoming aware of the information, report the information required by § 803.32 to FDA, on FDA Form 3500A, or an electronic equivalent as approved under § 803.14, and if the identity of the manufacturer is known, to the device manufacturer.

(2) *Reports of serious injury.* Whenever a user facility receives or otherwise becomes aware of information, from any source, that reasonably suggests that a device has or may have caused or contributed to a serious injury to a patient of the facility, the facility shall, as soon as practicable but not later than 10 work days after becoming aware of the information, report the information required by § 803.32, on FDA Form 3500A or electronic equivalent, as approved under § 803.14, to the manufacturer of the device. If the identity of the manufacturer is not known, the report shall be submitted to FDA.

(b) *Information that is reasonably known to user facilities.* User facilities must provide all information required in this subpart C that is reasonably known to them. Such information includes information found in documents in the possession of the user facility and any information that becomes available as a result of reasonable followup within the facility. A user facility is not required to evaluate or investigate the event by obtaining or evaluating information that is not reasonably known to it.

§ 803.32 Individual adverse event report data elements.

User facility reports shall contain the following information, reasonably known to them as described in 803.30(b), which corresponds to the format of FDA Form 3500A:

(a) Patient information (Block A) shall contain the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Block B) shall contain the following:

(1) Identification of adverse event or product problem;

(2) Outcomes attributed to the adverse event, e.g., death; or serious injury, that is:

(i) Life threatening injury or illness;

(ii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iii) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of event or problem, including a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests including dates and laboratory data; and

(7) Description of other relevant history including pre- existing medical conditions.

(c) Device information (Block D) shall contain the following:

(1) Brand name;

(2) Type of device;

(3) Manufacturer name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number, or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explantation (month, day, year);

(9) Whether device was available for evaluation and whether device was returned to the manufacturer; if so, the date it was returned to the manufacturer; and

(10) Concomitant medical products and therapy dates. (Do not list products that were used to treat the event.)

(d) Initial reporter information (Block E) shall contain the following:

(1) Name, address, and telephone number of the reporter who initially provided information to the user facility, manufacturer, or distributor;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether initial reporter also sent a copy of the report to FDA, if known.

(e) User facility information (Block F) shall contain the following:

(1) Whether reporter is a user facility;

(2) User facility number;

(3) User facility address;

(4) Contact person;

(5) Contact person's telephone number;

(6) Date the user facility became aware of the event (month, day, year);

(7) Type of report (initial or followup (if followup, include report number of initial report));

(8) Date of the user facility report (month, day, year);

(9) Approximate age of device;

(10) Event problem codes—patient code and device code (refer to FDA ''Coding Manual For Form 3500A'');

(11) Whether a report was sent to FDA and the date it was sent (month, day, year);

(12) Location, where event occurred;

(13) Whether report was sent to the manufacturer and the date it was sent (month, day, year); and

(14) Manufacturer name and address; if available.

§ 803.33 Semiannual reports.

(a) Each user facility shall submit to FDA a semiannual report on FDA Form 3419, or electronic equivalent as approved by FDA under § 803.14. Semiannual reports shall be submitted by January 1 (for reports made July through December) and by July 1 (for reports made January through June) of each year. The semiannual report and envelope shall be clearly identified and submitted to FDA with information that includes:

(1) User facility's HCFA provider number used for medical device reports, or number assigned by FDA for reporting purposes in accordance with § 803.3(dd);

(2) Reporting year and period, e.g., January through June or July through December;

(3) Facility's name and complete address;

(4) Total number of reports attached or summarized;

(5) Date of the semiannual report and the lowest and highest user facility report number of medical device reports submitted during the report period, e.g., 1234567890–1995–0001 through 1000;

(6) Name, position title, and complete address of the individual designated as the facility contact person responsible for reporting to FDA and whether that person is a new contact for that facility; and

(7) Information for each reportable event that occurred during the semiannual reporting period including:

(i) User facility report number;

(ii) Name and address of the device manufacturer;

(iii) Device brand name and common name;

(iv) Product model, catalog, serial and lot number;

(v) A brief description of the event reported to the manufacturer and/or FDA; and

(vi) Where the report was submitted, i.e., to FDA, manufacturer, distributor, etc.

(b) In lieu of submitting the information in paragraph (a)(7) of this section, a user facility may submit a copy of FDA Form 3500A, or an electronic equivalent as approved under section 803.14, for each medical device report submitted to FDA and/or

manufacturers by that facility during the reporting period.

(c) If no reports are submitted to either FDA or manufacturers during these time periods, no semiannual report is required.

Subpart D—[Reserved]

Subpart E—Manufacturer Reporting Requirements

§ 803.50 Individual adverse event reports; manufacturers.

(a) *Reporting standards.* Device manufacturers are required to report within 30 days whenever the manufacturer receives or otherwise becomes aware of information, from any source, that reasonably suggests that a device marketed by the manufacturer:

(1) May have caused or contributed to a death or serious injury; or

(2) Has malfunctioned and such device or similar device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury, if the malfunction were to recur.

(b) *Information that is reasonably known to manufacturers.*—(1) Manufacturers must provide all information required in this subpart E that is reasonably known to them. FDA considers the following information to be reasonably known to the manufacturer:

(i) Any information that can be obtained by contacting a user facility, distributor and/or other initial reporter;

(ii) Any information in a manufacturer's possession; or

(iii) Any information that can be obtained by analysis, testing or other evaluation of the device.

(2) Manufacturers are responsible for obtaining and providing FDA with information that is incomplete or missing from reports submitted by user facilities, distributors, and other initial reporters. Manufacturers are also responsible for conducting an investigation of each event, and evaluating the cause of the event. If a manufacturer cannot provide complete information on an MDR report, it must provide a statement explaining why such information was incomplete and the steps taken to obtain the information. Any required information not available at the time of the report, which is obtained after the initial filing, must be provided by the manufacturer in a supplemental report under § 803.56.

§ 803.52 Individual adverse event report data elements.

Individual medical device manufacturer reports shall contain the following information, known or reasonably known to them as described in § 803.50(b), which corresponds to the format of FDA Form 3500A:

(a) Patient information (Block A) shall contain the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Block B) shall contain the following:

(1) Adverse event or product problem;

(2) Outcomes attributed to the adverse event, e.g., death; or serious injury, that is:

(i) Life threatening injury or illness;

(ii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iii) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of the event or problem to include a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests, including dates and laboratory data; and

(7) Other relevant patient history including pre-existing medical conditions.

(c) Device information (Block D) shall contain the following:

(1) Brand name;

(2) Type of device;

(3) Manufacturer name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explantation (month, day, year);

(9) Whether the device was available for evaluation, and whether the device was returned to the manufacturer, and if so, the date it was returned to the manufacturer; and

(10) Concomitant medical products and therapy dates. (Do not list products that were used to treat the event.)

(d) Initial reporter information (Block E) shall contain the following:

(1) Name, address, and phone number of the reporter who initially provided information to the user facility, manufacturer, or distributor;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether the initial reporter also sent a copy of the report to FDA, if known.

(e) All manufacturers (Block G) shall contain the following:

(1) Contact office name and address and device manufacturing site;

(2) Telephone number;

(3) Report sources;

(4) Date received by manufacturer (month, day, year);

(5) Type of report being submitted (e.g., 5-day, initial, supplemental); and

(6) Manufacturer report number.

(f) Device manufacturers (Block H) shall contain the following:

(1) Type of reportable event (death, serious injury, malfunction, etc.);

(2) Type of followup report, if applicable (e.g., correction, response to FDA request, etc.);

(3) If the device was returned to the manufacturer and evaluated by the manufacturer, a summary of the evaluation. If no evaluation was performed, provide an explanation why no evaluation was performed;

(4) Device manufacture date (month, day, year);

(5) Was device labeled for single use;

(6) Evaluation codes (including event codes, method of evaluation, result, and conclusion codes) (refer to FDA ''Coding Manual for Form 3500A'');

(7) Whether remedial action was taken and type;

(8) Whether use of device was initial, reuse, or unknown;

(9) Whether remedial action was reported as a removal or correction under section 519(f) of the act (list the correction/removal report number); and

(10) Additional manufacturer narrative; and/or

(11) Corrected data, including:

(i) Any information missing on the user facility report or distributor report, including missing event codes, or information corrected on such forms after manufacturer verification;

(ii) For each event code provided by the user facility under § 803.32(d)(10) or a distributor, a statement of whether the type of the event represented by the code is addressed in the device labeling; and

(iii) If any required information was not provided, an explanation of why such information was not provided and the steps taken to obtain such information.

§ 803.53 Five-day reports.

A manufacturer shall submit a 5-day report to FDA, on Form 3500A or electronic equivalent as approved by FDA under § 803.14 within 5 workdays of:

(a) Becoming aware that a reportable MDR event or events, from any information, including any trend analysis, necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health; or

(b) Becoming aware of an MDR reportable event for which FDA has made a written request for the submission of a 5-day report. When such a request is made, the manufacturer shall submit, without further requests, a 5-day report for all subsequent events of the same nature that involve substantially similar devices for the time period specified in the written request. The time period stated in the original written request can be extended by FDA if it is in the interest of the public health.

§ 803.55 Baseline reports.

(a) A manufacturer shall submit a baseline report on FDA Form 3417, or electronic equivalent as approved by FDA under § 803.14 for a device when the device model is first reported under § 803.50.

(b) Each baseline report shall be updated annually, on the anniversary month of the initial submission, after the initial baseline report is submitted. Changes to baseline information shall be reported in the manner described in § 803.56 (i.e., include only the new, changed, or corrected information in the appropriate portion(s) of the report form). Baseline reports shall contain the following:

(1) Name, complete address, and registration number of the manufacturer's reporting site. If the reporting site is not registered, FDA will assign a temporary registration number until the reporting site officially registers. The manufacturer will be informed of the temporary registration number;

(2) FDA registration number of each site where the device is manufactured;

(3) Name, complete address, and telephone number of the individual who has been designated by the manufacturer as its MDR contact and date of the report. For foreign manufacturers, a confirmation that the individual submitting the report is the agent of the manufacturer designated under § 803.58(a) is required;

(4) Product identification, including device family, brand name, generic name, model number, catalog number, product code and any other product identification number or designation;

(5) Identification of any device previously reported in a baseline report that is substantially similar (e.g., same device with a different model number, or same device except for cosmetic differences in color or shape) to the device being reported, including the identification of the previously reported device by model number, catalog number or other product identification, and the date of the baseline report for the previously reported device;

(6) Basis for marketing, including 510(k) premarket notification number or PMA number, if applicable, and whether the device is currently the subject of an approved post-market study under section 522 of the act;

(7) Date the device was initially marketed and, if applicable, the date on which the manufacturer ceased marketing the device;

(8) Shelf life, if applicable, and expected life of the device;

(9) The number of devices manufactured and distributed in the last 12 months and, an estimate of the number of devices in current use; and

(10) Brief description of any methods used to estimate the number of devices distributed and the method used to estimate the number of devices in current use. If this information was provided in a previous baseline report, in lieu of resubmitting the information, it may be referenced by providing the date and product identification for the previous baseline report.

§ 803.56 Supplemental reports.

When a manufacturer obtains information required under this part that was not provided because it was not known or was not available when the initial report was submitted, the manufacturer shall submit to FDA the supplemental information within 1 month following receipt of such information. In supplemental reports, the manufacturer shall:

(a) Indicate on the form and the envelope, that the reporting form being submitted is a supplemental report. If the report being supplemented is an FDA Form 3500A report, the manufacturer must select, in Item H–2, the appropriate code for the type of supplemental information being submitted;

(b) Provide the appropriate identification numbers of the report that will be updated with the supplemental information, e.g., original manufacturer report number and user facility report number, if applicable;

(c) For reports that cross reference previous reports, include only the new, changed, or corrected information in the appropriate portion(s) of the respective form(s).

§ 803.57 Annual certification.

All manufacturers, including U.S. agents of foreign manufacturers required to report under this section, shall submit a certification report to FDA, on FDA Form 3381, or electronic equivalent as approved under part 814 of this chapter. The date for submission of certification coincides with the date for the firm's annual registration, as designated in § 807.21 of this chapter. The certification period will be the 12-month period ending 1 month before the certification date. The reports shall contain the following information:

(a) Name, address, telephone number, and FDA registration number or FDA-assigned identification number of the firm and whether the firm is a manufacturer;

(b) A statement certifying that:

(1) The firm listed in paragraph (a) of this section has filed reports for all reportable events required under this section during the previous 12-month period. The firm shall also provide a numerical summary of MDR reports that it submitted to FDA during the preceding year; or

(2) The firm listed in paragraph (a) of this section did not receive reportable events for any devices manufactured by the firm during the previous 12-month period.

(c) Certification shall be made by the president, chief executive officer, U.S.-designated agent of a foreign manufacturer, or other official most directly responsible for the firm's operations; and

(d) Name of the manufacturer and registration numbers submitted under paragraph (a) of this section shall be the same as those used in submitting the reports required by §§ 803.52, 803.53 and 803.55. Multisite manufacturers who choose to certify centrally must identify the reporting sites, by registration number or FDA-assigned identification number and name covered by the certification, and provide the information required by paragraph (b) of this section for each reporting site.

§ 803.58 Foreign manufacturers.

(a) Every foreign manufacturer whose devices are distributed in the United States shall designate a U.S. agent to be responsible for reporting in accordance with § 807.40 of this chapter. The U.S. designated agent accepts responsibility for the duties that such designation entails. Upon the effective date of this regulation, foreign manufacturers shall inform FDA, by letter, of the name and address of the U.S. agent designated under this section and § 807.40 of this chapter, and shall update this information as necessary. Such updated information shall be submitted to FDA, within 5 days of a change in the designated agent information.

(b) U.S.-designated agents of foreign manufacturers are required to:

(1) Report to FDA in accordance with §§ 803.50, 803.52, 803.53, 803.55, and 803.56;

(2) Conduct, or obtain from the foreign manufacturer the necessary information regarding, the investigation and evaluation of the event to comport with the requirements of § 803.50;

(3) Certify in accordance with § 803.57;

(4) Forward MDR complaints to the foreign manufacturer and maintain documentation of this requirement;

(5) Maintain complaint files in accordance with § 803.18; and

(6) Register, list, and submit premarket notifications in accordance with part 807 of this chapter.

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

2. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374).

3. Section 807.3 is amended by adding new paragraph (r) to read as follows:

§ 807.3 Definitions.

* * * * *

(r) *U.S.-designated agent* means the person, residing in the United States, designated and authorized by the owner or operator of a foreign manufacturer who exports devices into the United States and is responsible for:

(1) Submitting MDR reports,

(2) Submitting annual certifications,

(3) Acting as the official correspondent,

(4) Submitting registration information,

(5) Submitting device listing information, and

(6) Submitting premarket notifications on behalf of the foreign manufacturer.

4. Section 807.20 is amended by adding new paragraph (a)(6) to read as follows:

§ 807.20 Who must register and submit a device list.

(a) * * *

(6) Acts as the U.S.-designated agent as defined in § 807.3(r).

* * * * *

5. Section 807.22 is amended by revising paragraph (a) to read as follows:

§ 807.22 How and where to register establishments and list devices.

(a) The first registration of a device establishment shall be on Form FDA–2891 (Initial Registration of Device Establishment). Forms are available upon request from the Office of Compliance, Center for Devices and Radiological Health (HFZ–307), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, or from Food and Drug Administration district offices. Subsequent annual registration shall be accomplished on Form FDD–2891a (Annual Registration of Device Establishment), which will be furnished by FDA to establishments whose registration for that year was validated under § 807.35(a). The forms will be mailed to the owner or operators of all establishments via the official correspondent in accordance with the schedule as described in § 807.21(a). The completed form shall be mailed to the address designated in this paragraph 30 days after receipt from FDA.

* * * * *

6. Section 807.40 is revised to read as follows:

§ 807.40 Establishment registration and device listing for U.S. agents of foreign manufacturers of devices.

(a) Each foreign device manufacturer who exports devices into the United States shall designate a person as their U.S.-designated agent, who is responsible for:

(1) Submitting MDR reports,

(2) Submitting annual certifications,

(3) Acting as the official correspondent,

(4) Submitting registration information,

(5) Submitting device listing information, and

(6) Submitting premarket notifications.

(b) The foreign manufacturer shall provide FDA with a statement of authorization for their U.S.-designate to perform MDR reporting duties under part 803 of this chapter, and to register, list, and submit premarket notifications under this part. The foreign manufacturer must provide this statement of authorization along with the name, address, and telephone number of the person initially designated, or any subsequent person designated as the U.S.-designated agent, within 5 days of the initial or subsequent designation. Information shall be sent to the Center for Devices and Radiological Health, Medical Device Reporting, Food and Drug Administration, P.O. Box 3002, Rockville, MD 20847–3002.

(c) The U.S.-designated agent of a foreign device manufacturer that exports devices into the United States is required to register the foreign manufacturer's establishments or places of business, and to list the foreign manufacturer's devices, in accordance with subpart B of this part, unless exempt under subpart D of this part, and to submit premarket notifications in accordance with subpart E of this part. The information submitted shall be in the English language.

Dated: October 25, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29906 Filed 12–8–95; 8:45 am]

BILLING CODE 4160–01–P

21 CFR Part 5

Delegations of Authority; Medical Device Reporting Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to redelegate to certain officials in the Center for Devices and Radiological Health (CDRH) authorities relating to medical device reporting procedures.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT:

Kerry G. Rothschild, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, or

Ellen R. Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under part 5 (21 CFR part 5) by adding new § 5.98 *Authority relating to medical device reporting procedures*. In conjunction with CDRH's issuance of a medical device reporting final rule under section 519 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i), the Commissioner of Food and Drugs (the Commissioner) has decided to delegate to certain officials in CDRH the authority to approve electronic reporting under 21 CFR 803.14, to request the submission of additional information under 21 CFR 803.15, and to grant or revoke exemptions and variances from reporting requirements under 21 CFR 803.19. Delegation of these authorities to the directors and deputy directors of the Office of the Director and the Office of Surveillance and Biometrics, CDRH,

will increase the efficiency of the medical device reporting process.

The authority delegated may be redelegated further only with the Commissioner's approval. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. New § 5.98 is added to subpart B to read as follows:

§ 5.98 Authority relating to medical device reporting procedures.

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Surveillance and Biometrics, CDRH, are authorized to approve electronic reporting under § 803.14 of this chapter.

(b) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Surveillance and Biometrics, CDRH, are authorized to request the submission of additional information under § 803.15 of this chapter.

(c) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Surveillance and Biometrics, CDRH, are authorized to grant or revoke exemptions and variances from reporting requirements under § 803.19 of this chapter.

Dated: September 1, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29905 Filed 12–8–95; 8:45 am]

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800–End	(869–026–00129–4)	22.00	July 1, 1995
33 Parts:			
*1–124	(869–026–00130–8)	20.00	July 1, 1995
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–026–00132–4)	24.00	July 1, 1995
34 Parts:			
1–299	(869–026–00133–2)	25.00	July 1, 1995
300–399	(869–026–00134–1)	21.00	July 1, 1995
400–End	(869–022–00132–9)	40.00	July 1, 1994
35	(869–026–00136–7)	12.00	July 1, 1995
36 Parts			
1–199	(869–026–00137–5)	15.00	July 1, 1995
200–End	(869–026–00138–3)	37.00	July 1, 1995
37	(869–026–00139–1)	20.00	July 1, 1995
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
1–51	(869–026–00143–0)	40.00	July 1, 1995
52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61–71	(869–026–00147–2)	36.00	July 1, 1995
81–85	(869–022–00145–1)	23.00	July 1, 1994
86–99	(869–022–00146–9)	41.00	July 1, 1994
87–149	(869–026–00150–2)	41.00	July 1, 1995
150–189	(869–026–00151–1)	25.00	July 1, 1995
190–259	(869–026–00152–9)	17.00	July 1, 1995
260–299	(869–022–00150–7)	36.00	July 1, 1994
300–399	(869–026–00154–5)	21.00	July 1, 1995
400–424	(869–026–00155–3)	26.00	July 1, 1995
425–699	(869–026–00156–1)	30.00	July 1, 1995
700–789	(869–026–00157–0)	25.00	July 1, 1995
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
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101	(869–026–00160–0)	29.00	July 1, 1995
102–200	(869–026–00161–8)	15.00	July 1, 1995
201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–022–00160–4)	24.00	Oct. 1, 1994
400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
1–999	(869–022–00163–9)	23.00	Oct. 1, 1994
1000–3999	(869–022–00164–7)	31.00	Oct. 1, 1994
4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
44	(869–022–00166–3)	27.00	Oct. 1, 1994
45 Parts:			
1–199	(869–022–00167–1)	22.00	Oct. 1, 1994
200–499	(869–022–00168–0)	15.00	Oct. 1, 1994
500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
1200–End	(869–022–00170–1)	26.00	Oct. 1, 1994
46 Parts:			
1–40	(869–022–00171–0)	20.00	Oct. 1, 1994
41–69	(869–022–00172–8)	16.00	Oct. 1, 1994
70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
90–139	(869–022–00174–4)	15.00	Oct. 1, 1994
140–155	(869–022–00175–2)	12.00	Oct. 1, 1994
156–165	(869–022–00176–1)	17.00	[7] Oct. 1, 1993
166–199	(869–022–00177–9)	17.00	Oct. 1, 1994
200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
500–End	(869–022–00179–5)	15.00	Oct. 1, 1994
47 Parts:			
0–19	(869–022–00180–9)	25.00	Oct. 1, 1994
20–39	(869–022–00181–7)	20.00	Oct. 1, 1994
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48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
2 (Parts 201–251)	(869–022–00187–6)	16.00	Oct. 1, 1994
2 (Parts 252–299)	(869–022–00188–4)	13.00	Oct. 1, 1994
3–6	(869–022–00189–2)	23.00	Oct. 1, 1994
7–14	(869–022–00190–6)	30.00	Oct. 1, 1994
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49 Parts:			
1–99	(869–022–00193–1)	24.00	Oct. 1, 1994
100–177	(869–022–00194–9)	30.00	Oct. 1, 1994
178–199	(869–022–00195–7)	21.00	Oct. 1, 1994
200–399	(869–022–00196–5)	30.00	Oct. 1, 1994
400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
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1200–End	(869–022–00199–0)	15.00	Oct. 1, 1994
50 Parts:			
1–199	(869–022–00200–7)	25.00	Oct. 1, 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.